



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2009

Ms. Bertha Bailey Whatley
Chief Legal Counsel
Fort Worth Independent School District
100 North University Drive
Fort Worth, Texas 76107

OR2009-17426

Dear Ms. Whatley:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 363717.

The Fort Worth Independent School District (the "district") received a request for "value-added" data for the classroom, school level, and district level for the 2008-2009 school year. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

ruling process under the Act.² See 20 U.S.C. § 1232g(b); see also *id.* § 1232g(a)(4)(A) (defining “education records”); Open Records Decision No. 462 at 15 (1987). Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. See 34 C.F.R. § 99.3 (defining “personally identifiable information”).

We note that portions of the submitted information contain redacted student names, which you appear to have marked. Because our office is prohibited from reviewing an education record to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of the education records.

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, including section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. See Open Records Decision No. 643 (1996). For the purposes of section 21.355, a teacher is someone who is required to and does in fact hold a teaching certificate or permit required under chapter 21 of the Education Code and who is engaged in the process of teaching at the time of the evaluation. See *id.* at 4. You state that the individuals at issue each hold a certificate required under chapter 21 of the Education Code. However, the submitted information does not identify a teacher or administrator. In addition, you have failed to demonstrate how the submitted information consists of evaluations as contemplated by section 21.355 of the Education Code. Accordingly, the district may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise no further exceptions, the submitted information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php,

²A copy of this letter may be found on the Office of the Attorney General’s website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/rl

Ref: ID# 363717

Enc. Submitted documents

c: Requestor
(w/o enclosures)