



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2010

Mr. Miles J. LeBlanc
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2010-06548

Dear Mr. LeBlanc:

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# 378825.

The Houston Independent School District (the "district") received two requests from the same requestor. The first request seeks the EVAAS rating number received by all district teachers who received such a rating since 2005 in a format which shows the disciplines and grade levels the teachers taught. The second request seeks information pertaining to the numbers of students included in the EVAAS rating system for the academic year of 2008-2009. We understand you have released information responsive to the second request to the requestor. You claim the submitted 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 We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

Initially, we note you have included in the submitted information columns identifying the names of the classroom teachers and the schools at which the teachers at issue worked. We note the requestor specifically excludes the identities of teachers and the identities of the teachers' schools from his first request. Thus, such information is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release that information in response to the request.

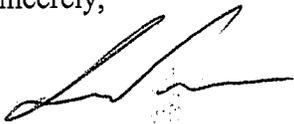
Next, we note the portion of the responsive information pertaining to EVAAS rating numbers for 2008-2009 may have been subject to a previous request for information, in response to which this office issued Open Records Letter No. 2010-04806 (2010). In that decision, we ruled the district may not withhold the responsive information at issue in that ruling under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code because the information did not constitute teacher evaluations. As we have no indication the law, facts, or circumstances on which the prior ruling was based have changed, the district must continue to rely on that ruling as a previous determination and release any previously ruled upon information in accordance with that prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the information at issue was not previously ruled upon, we will consider your argument against its disclosure.

Section 552.101 of the Government Code excepts 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, such as section 21.355 of the Education Code, which provides "[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 the responsive information consists of value-added scores the district compiles as evaluations of its teachers. However, we note the responsive information does not identify a teacher. Thus, the responsive information does not constitute teacher evaluations for purposes of section 21.355. Accordingly, the district may not withhold any portion of the responsive information under section 552.101 in conjunction with section 21.355. As you raise no further exceptions to disclosure, the district must release the responsive information to the requestor.

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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 378825

Enc. Submitted documents

c: Requestor
(w/o enclosures)