



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2010

Mr. Robb D. Decker
Walsh, Anderson, Brown, Gallegos & Green, P.C.
For Northside Independent School District
P.O. Box 460606
San Antonio, Texas 78246

OR2010-09341

Dear Mr. Decker:

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# 382256.

The Northside Independent School District (the "district"), which you represent, received a request for nine categories of information related to a named former employee during a specified time period.¹ You state that the district will release some of the requested information to the requestor. You claim that 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 information.

You inform us that the district has adopted and administered its own local district-based group-administered assessment test pursuant to section 39.026 of the Education Code. *See* Educ. Code § 39.026 (in addition to assessment instruments adopted by the Texas Education Agency (the "agency") and administered by the State Board of Education, a school district may adopt and administer criterion-referenced or norm-referenced assessment instruments, or both, at any grade level). You claim that the submitted answer key to this local district-based group-administered test is confidential. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception

¹You inform us that the district sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

encompasses information that other statutes make confidential. Section 39.032(e) of the Education Code authorizes the agency to adopt rules for the maintenance of the security of the contents of all assessment instruments. Educ. Code § 39.032(e). An “assessment instrument” is defined as a group-administered achievement test. *Id.* § 39.032(f). In accordance with section 39.032, you inform us that the agency has adopted regulations governing the administration of local district-based group-administered testing in chapter 101 of title 19 of the Texas Administrative Code. 19 T.A.C. ch. 101. Section 101.063 of title 19 of the Texas Administrative Code, subchapter C provides in part, “[t]he contents of each test booklet and answer document are confidential[.]” 19 T.A.C. § 101.63. Section 101.101 of title 19, titled Group-Administered Tests, provides in relevant part:

(a) An assessment instrument required under the Texas Education Code (TEC), § 39.032, is defined as any district-commissioned achievement test, either nationally normed or criterion-referenced, that is group administered and reported publicly (e.g., to the local board of trustees) in the aggregate. A test given for a special purpose, such as program placement or individual evaluation (e.g., a spelling test, a diagnostic test such as a reading inventory or interim benchmark assessment, or a *released statewide assessment instrument*), is not included in this definition. The commissioner of education shall provide annually to school districts and charter schools a list of state-approved, norm-referenced group-administered achievement tests that test publishers certify meet the requirements of TEC, § 39.032.

...

(d) To maintain the security and confidentiality of group-administered achievement tests, school districts and charter schools shall follow the applicable procedures for test security and confidentiality delineated in Subchapter C of this chapter (relating to Security and Confidentiality).

Id. § 101.101(a) (emphasis added), (d). You state that the submitted information contains answer keys related to local district-based group-administered achievement tests in reading for the fourth and fifth grades. You explain that these tests are adopted and utilized by the district for local student testing as authorized by section 39.026 of the Education Code. Thus, you assert that the submitted answer keys to these group-administered achievement tests are confidential under section 101.63 of title 19 of the Administrative Code. However, the definition of a local district-based assessment instrument that is group-administered does not include a statewide assessment instrument that has been released. *See id.* § 101.101(a). In this instance, you state, and the submitted documents reflect, that the submitted answer keys relate to released statewide assessment instruments. *See* Educ. Code § 39.023(e) (agency shall release questions and answer keys to certain assessment instruments every third year). Therefore, the submitted answer keys are not assessment instruments as defined by section 101.101 of title 19 of the Administrative Code. Consequently, we find that the

submitted answer keys are not confidential pursuant to section 101.63 of title 19 of the Administrative Code and, therefore may not be withheld under section 552.101 of the Government Code. As you raise no further exceptions to disclosure, 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, 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/dls

Ref: ID# 382256

Enc. Submitted documents

c: Requestor
(w/o enclosures)