



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2010

Mr. W. Montgomery Meitler
Assistant Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701

OR2010-18785

Dear Mr. Meitler:

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# 403585 (TEA PIR# 13946).

The Texas Education Agency (the "agency") received a request for Texas educators' certification test results.¹ You state you will release some of the responsive 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.

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 section encompasses information protected by other statutes. Section 552.101 encompasses section 21.048 of the Education Code, which provides in part:

(c-1) The results of an examination administered under this section are confidential and are not subject to disclosure under [the Act] unless:

¹You note that the agency received a clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or

(2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). You inform us the information you have marked consists of results of examinations administered under section 21.048 of the Education Code. You state section 21.048(c-1)(1) is not applicable to the information at issue. Further, the information reflects the educators at issue have not failed the examination more than five times. Thus, the information you have marked is confidential under section 21.048(c-1) of the Education Code and must be withheld under section 552.101 of the Government Code.

You state the agency is willing to provide the information at issue to the requestor through an intergovernmental transfer. The interagency transfer doctrine provides that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinion No. GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000). Generally, if confidentiality provisions or another statute specifically authorize release of information under certain circumstances or to particular entities, then the information may only be released or transferred in accordance therewith. *See* Attorney General Opinions GA-0055 at 3-4 (SBEC not entitled to access teacher appraisals made confidential by section 21.355 of the Education Code where section 21.352 of the Education Code expressly authorizes limited release of appraisals to other school districts in connection with teachers' employment applications), DM-353 (1995) at 4-5 n.6 (detailed provisions in state law for disclosure of records would not permit disclosure "to other governmental entities and officials . . . without violating the record's confidentiality"), JM-590 (1986) at 5 ("express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others"); Open Records Decision No. 655 (1997) (because statute permitted Department of Public Safety to transfer confidential criminal history information only to certain entities for certain purposes, county could not obtain information from the department regarding applicants for county employment). We note that an interagency transfer of the requested test results is not permissible where, as here, the applicable statute enumerates the specific circumstances under which information encompassed by the statute may be disclosed, and these circumstances are not met. *See* Open Records Decision Nos. 655 at 8-9 (1997), 516 at 4-5 (1989), 490 at 2 (1988); *see also* Attorney General Opinion GA-0055.

In summary, the agency must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The remaining 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 403585

Enc. Submitted documents

c: Requestor
(w/o enclosures)