



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 30, 2012

Ms. Christine Badillo  
Walsh, Anderson, Brown, Gallegos & Green, P.C.  
P.O. Box 2156  
Austin, Texas 78768-2156

OR2012-01483

Dear Ms. Badillo:

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# 443725.

The Leander Independent School District (the "district"), which you represent, received a request for information pertaining to the ICAP Program. You state the district will release some of the requested information upon the requestor's response to a cost estimate. You claim the remaining 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.<sup>1</sup>

Initially, we must address the district's obligations under the Act. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). The

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<sup>1</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

submitted documents reflect the district received the present request for information on October 7, 2011. Thus, the district's ten-business-day deadline under section 552.301(b) was October 21, 2011, and the district's fifteen-business-day deadline under section 552.301(e) was October 28, 2011. We note you did not request a ruling from this office until November 18, 2011 and did not submit the required documents to this office until December 2, 2011. However, you state the district sought and received clarification from the requestor on October 24, 2011. You indicate the district sought a second clarification on November 2, 2011 and received the second, and final, clarification on November 4, 2011. Thus, we understand you to claim the deadlines should be reset from the date the district received the final clarification. However, we note the district did not request clarification of the request until after the ten-business-day deadline had passed. As such, the statutory deadlines for requesting an opinion from this office and submitting the required documents were not reset and must be measured from the date the district received the request for information on October 7, 2011. *See generally City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (after requesting clarification within ten-business-day deadline, city timely submitted request for opinion within ten business days after receiving clarification). Consequently, we find the district failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See Gov't Code § 552.302; Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You assert the submitted information is excepted from disclosure under section 552.101 of the Government Code. Because section 552.101 can provide a compelling reason to withhold information, we will address your claim under this exception.

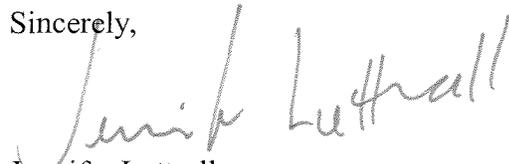
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 21.355 of the Education Code, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). 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 an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for the purposes of section 21.355, the word "teacher" means a person who is required to, and does in fact, hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.*

You contend the submitted Classroom Evaluation-ICAP forms and Teacher/Campus Consultation form consist of evaluations of district teachers who were performing the functions of teachers when the information at issue was created. You do not inform us, however, whether the district teachers at issue held the appropriate certificates under chapter 21 of the Education Code when the information at issue was created. Therefore, we must rule conditionally. Thus, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code to the extent the teachers at issue held the appropriate certificates under chapter 21 of the Education Code and were functioning as teachers at the time the submitted information was created. However, to the extent the teachers at issue did not hold the appropriate certificates under chapter 21 or were not functioning as teachers at the time the submitted information was created, this information is not confidential under section 21.355 and may not be withheld under section 552.101 on that basis.

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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 443725

Enc. Submitted documents

c: Requestor  
(w/o enclosures)