



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2012

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

OR2012-01833

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# 444496.

The Houston Independent School District (the "district") received a request for "the value added analysis data [EVAAS] with employee names for the school year, 2010-2011." You explain that not all district employees or even all district teachers are assigned value-added data. To the extent the requested data exist for certain district teachers, you claim the data are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.¹ We have also received and considered the requestor's comments. *See Gov't Code § 552.304* (interested party may submit written comments regarding availability of requested information).

Initially, we address the requestor's allegation that the district failed to comply with section 552.301(b) of the Government Code in seeking a ruling from this office. Pursuant to section 552.301(b), a governmental body that wishes to withhold information from public

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.

disclosure must request a ruling from this office and state the exceptions that apply within ten business days of receiving the written request for information. *See id.* § 552.301(b). In this instance, the district and the requestor state, and the submitted information reflects, the district received the request for information on November 11, 2011. You note the district “was officially closed for business over the Thanksgiving break on Wednesday, November 23, 2011, Thursday, November 24, 2011 and Friday, November 25, 2011.” This office does not count any holidays, including skeleton crew days observed by a governmental body, as business days for the purpose of calculating a governmental body’s deadline under the Act. Thus, the district’s ten-business-day deadline was November 30, 2011. The district’s request for a ruling from this office was postmarked within the ten-business-day deadline. *See Gov’t Code* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we find the district complied with section 552.301 of the Government Code.

Next, we consider the district’s claimed exceptions to disclosure. 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 encompasses information made confidential by statute. You raise section 552.101 in conjunction with 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 section applies 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)*. In *Open Records Decision No. 643*, we determined that for purposes of section 21.355, the word “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. You state the information at issue relates to teachers who “held teaching certificates or teaching permits, as required by Chapter 21 of the Texas Education Code, during the time frame the information used to calculate the value-added data was generated.” You explain the value-added data quantify the academic growth of students assigned to a specific teacher. You further explain that insufficient student academic growth is evaluative of a teacher’s performance and effectiveness and can be the basis of the district’s non-renewal of a teacher’s term contract. Based on your representations and our review of the information at issue, we conclude that the information consists of teacher evaluations for the purposes of section 21.355. Therefore, the district must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.²

²As our ruling is dispositive, we need not address your other argument against disclosure of this information.

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,



Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/som

Ref: ID# 444496

Enc. Submitted documents

c: Requestor
(w/o enclosures)