



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2014

Mr. Christopher B. Gilbert  
Counsel for Katy Independent School District  
Thompson & Horton, L.L.P.  
3200 Southwest Freeway, Suite 2000  
Houston, Texas 77027

OR2014-09862

Dear Mr. Gilbert:

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# 525218.

The Katy Independent School District (the "district"), which you represent, received a request for all student records of a named student, and write-ups, memoranda, and reprimands of employees directly responsible for the provision of services to the student for the past four years. You state you do not have some information.<sup>1</sup> You state you will release some information. 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.<sup>2</sup>

Initially, we note the requestor seeks information created after the date the request was received. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See Gov't Code* §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request.

---

<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</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.

See Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. See Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the present request consists of information the district maintained or had a right of access to as of the date it received the request.

Next, you state the district sought clarification of the information requested. See Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). You do not indicate you have received clarification from the requestor. However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. See Open Records Decision No. 561 at 8 (1990). In this case, as you have submitted information responsive to the request for our review and raised exceptions to disclosure for this information, we consider the district has made a good-faith effort to identify information that is responsive to the request, and we will address the applicability of the claimed exceptions to the submitted information.

We note, and you acknowledge, the district did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. Gov't Code § 552.301(a)-(b). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. See Open Records Decision No. 150 at 2 (1977). Section 552.101 of the Government Code can provide a compelling reason to withhold information. Therefore, we will consider the district's argument 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 of the Government Code encompasses 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). We have determined, 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 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 claim the information in Exhibits B, C, and D consists of confidential teacher evaluations under section 21.355. You inform us each individual referred to in the information at issue is a certified teacher. *See* ORD 643 at 4. You state the employees at issue were acting in this capacity when the evaluations were created. Based on your representations and our review, we conclude the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/dls

Ref: ID# 525218

Enc. Submitted documents

c: Requestor  
(w/o enclosures)