



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 30, 2016

Ms. Jeanne C. Collins  
General Counsel  
El Paso Independent School District  
6531 Boeing Drive  
El Paso, Texas 79925

OR2016-19627

Dear Ms. Collins:

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# 624686 (EPISD ORR #2016.195).

The El Paso Independent School District (the "district") received a request for complaints filed against a named district employee during a specified time. You state you will release some information. You claim some of the submitted information is excepted from disclosure under section 552.135 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>1</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”); *see also* Open Records Decision No. 224 (1979) (student’s handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). The district has submitted unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider the district’s arguments against disclosure of the submitted information.

Section 552.135 of the Government Code provides, in relevant part, the following:

(a) “Informer” means a student or a former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student’s or former student’s name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee’s or former employee’s name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov’t Code § 552.135(a)-(c). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of “law,” a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Additionally, witnesses and other individuals who provide information in the course of an investigation are not informants for purposes of section 552.135 of the Government Code. You state the submitted information contains identifying information of students and employees who reported alleged violations of the Code of Ethics and Standard Practices for Texas Educators, section 247.2 of title 19 of the

Texas Administrative Code. Upon review, we conclude the district must withhold the information we marked under section 552.135 of the Government Code. However, we find the district has not demonstrated any of the remaining information at issue identifies an informer for purposes of section 552.135. Therefore, the district may not withhold any of the remaining information on that basis. As no further exceptions to disclosure have been raised, 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.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,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MJC/akg

Ref: ID# 624686

Enc. Submitted documents

c: Requestor  
(w/o enclosures)