



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 5, 2017

Ms. Elizabeth G. Neally
Counsel for Harlingen Consolidated Independent School District
Walsh Gallegos Treviño Russo & Kyle P.C.
100 Northeast Loop 410, Suite 900
San Antonio, Texas 78216

OR2017-27593

Dear Ms. Neally:

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# 684579.

The Harlingen Consolidated Independent School District (the "district"), which you represent, received a request for information pertaining to specified allegations. You state the district made redactions pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ 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 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 exception encompasses information other statutes make confidential, such as section 21.062 of the Education Code. Section 21.062 provides:

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>

(a) During an investigation by the [C]ommissioner [of Education (the “commissioner”)] for an alleged incident of misconduct, the commissioner may issue a subpoena to compel:

...
(2) the production, for inspection or copying, of relevant evidence that is located in this state.

...
(d) All information and materials subpoenaed or compiled in connection with an investigation described by Subsection (a) are confidential and not subject to disclosure under [the Act].

Educ. Code § 21.062(a)(2), (d). You state the submitted information relates to an investigation of an educator by the commissioner for an alleged incident of misconduct. You further state, and provide documentation showing, the submitted information was submitted to the Texas Education Agency in response to a subpoena issued by the commissioner. Based on your representations and our review, we agree the submitted information is generally confidential under section 21.062(d) of the Education Code.

However, the requestor represents the individual whose information is at issue. We note the submitted information contains this individual’s W-4 form, which is generally confidential under section 6103(a) of title 26 of the United States Code. *See* 26 U.S.C. § 61.03(a); *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993); Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as encompassing “a taxpayer’s identity, the nature, source, or amount of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax . . . penalty . . . or offense[.]” 26 U.S.C. § 6103(b)(2)(A). Nevertheless, section 6103(e) creates an exception to confidentiality under section 6103(a) and provides for disclosure of tax return information to the taxpayer. *See id.* § 6103(e)(7) (information may be disclosed to any person authorized by subsection (e) to obtain such information if Secretary of Treasury determines such disclosure would not seriously impair tax administration); *see also Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (26 U.S.C. § 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual’s right of access under federal Freedom of Information Act). The submitted information contains the requestor’s client’s W-4 form. Therefore, notwithstanding section 6103(a) of title 26 of the United States Code, the submitted W-4 form must generally be released to the requestor pursuant to section 6103(e)(7).

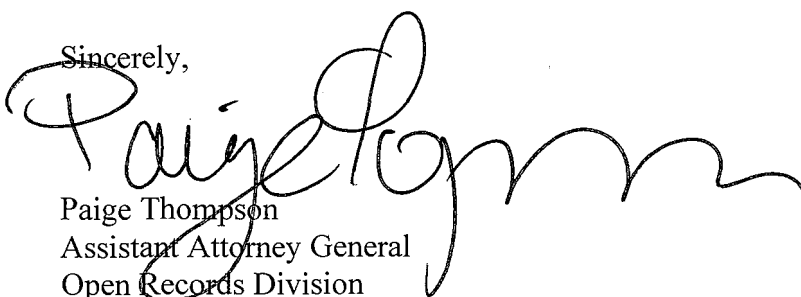
Thus, there is a conflict between the requestor's right of access to the W-4 form pursuant to section 6103 of title 26 of the United States Code and the confidentiality provision of section 21.062 of the Education Code. As federal law, section 6103 of title 26 of the United States Code preempts any conflicting state provisions, including section 21.062 of the Education Code. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Thus, we conclude the district must release the W-4 form to this requestor pursuant to section 6103 of title 26 of the United States Code.

In summary, the district must release the W-4 form pursuant to section 6103 of title 26 of the United States Code. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 21.062(d) of the Education Code.

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, 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 684579

Enc. Submitted documents

c: Requestor
(w/o enclosures)