



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 18, 2017

Ms. Elizabeth G. Neally
Counsel for Harlingen Consolidated Independent School District
Walsh, Gallegos, Trevino, Russo & Kyle, P.C.
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2017-28610

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# 689501.

The Harlingen Consolidated Independent School District (the "district"), which you represent, received a request for information pertaining to the requestor's client.¹ The district states it is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² The district states it will release some of the requested information, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have

¹The district sought and received 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).

²The 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 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. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

considered the claimed exception and reviewed the submitted information. We have also considered comments submitted by the Texas Education Agency (the “TEA”). *See* Gov’t Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 section 21.062 of the Education Code, which provides, in part, the following:

(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). The district states the submitted information relates to an investigation of an educator by the commissioner for an alleged incident of misconduct. The district further states, and provide documentation showing, the submitted information was submitted to TEA in response to a subpoena issued by the commissioner. Based on these representations, we agree the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.062(d) of the Education Code.³

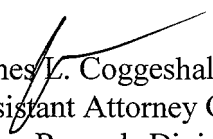
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

³As our ruling is dispositive, we do not address the remaining arguments to withhold this information.

[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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tdw

Ref: ID# 689501

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)