



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 25, 2019

Ms. Nella Joseph
Public Information Officer
Leander Independent School District
P.O. Box 218
Leander, Texas 78646

OR2019-08108

Dear Ms. Joseph:

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# 755508 (PIR No. 2470).

The Leander Independent School District (the "district") received a request for several categories of information related to an allegation of employee misconduct involving the requestor's child.¹ The district states it does not have information responsive to a portion of the request.² The district also states it is releasing some of the requested information. We understand the district has redacted student-identifying information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section

¹The district states it sought clarification of one of the categories of information requested. *See* Gov't Code § 552.222 (providing 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) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

1232g of title 20 of the United States Code.³ The district claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the district claims 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, in relevant part:

(a) During an investigation by 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); *see id.* §§ 5.001(3) (“Commissioner” means the commissioner of education), 21.001(1) (“Commissioner” includes a person designated by the commissioner). The district states the submitted information was subpoenaed or compiled in an investigation of an educator under section 21.062 of the Education Code. The district indicates the information was submitted to the Texas Education Agency in response to a subpoena issued by the commissioner. Based on the district’s representations and our review, 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.

³The 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/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

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,

A handwritten signature in black ink, appearing to read 'Michelle Garza', with a long horizontal flourish extending to the right.

Michelle Garza
Assistant Attorney General
Open Records Division

MG/mo

Ref: ID# 755508

Enc. Submitted documents

c: Requestor
(w/o enclosures)