



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 29, 2020

Dr. Greg Roach
Superintendent of Schools
Olney Independent School District
809 West Hamilton
Olney, TX 76374

OR2020-02684

Dear Dr. Roach:

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# 808889.

The Olney Independent School District (the "district") received a request for the personnel file, as well as any information provided to the Texas Education Agency or the Texas State Board of Educator Certification, related to the requestor's client. You state the district has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You claim the requested 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.

Initially, we note some of the submitted information is not responsive to the present request because it was created after the date of the present request. This ruling does not address

¹ The 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 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

the public availability of the non-responsive information, which we have marked, and the district need not release it in response to this request.²

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 remaining requested 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 responsive information under section 552.101 of the Government Code in conjunction with section 21.062(d) of the Education Code.

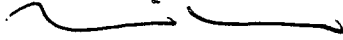
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

² As we are able to make this determination, we need not address your argument against disclosure of this information.

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Melanie Villars
Assistant Attorney General
Open Records Division

MJV/mo

Ref: ID# 808889

Enc. Submitted documents

c: Requestor
(w/o enclosures)