February 3, 2020

Mr. W. Montgomery Meitler  
Senior Counsel  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Dear Mr. Meitler:

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# 806943 (ORR# 40349).

The Texas Education Agency (“TEA”) received a request for information pertaining to a named individual. TEA claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 section 21.062 of the Education Code, which provides, in part, the following:

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

Finally, TEA asks this office to issue a previous determination permitting it to withhold certain information concerning open investigations of educator misconduct under section 552.101 of the Government Code in conjunction with section 21.062(d) of the Education Code without seeking a ruling from this office. See Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant TEA's request on this matter. Therefore, this letter ruling authorizes TEA to withhold all information and materials subpoenaed or compiled by TEA in connection with an investigation described by section 21.062(a) of the Education Code under section 552.101 of the Government Code in conjunction with section 21.062(d) of the Education Code, as long as other state or federal law does not permit access to the information. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, TEA need not ask for a decision from this office again with respect to this type of information. See ORD 673 at 7-8 (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

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 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/gw

Ref: ID# 806943

Enc. Submitted documents

c: Requestor
(w/o enclosures)