



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 31, 2020

Ms. Katheryne Ellison  
Assistant General Counsel  
Houston Independent School District  
4400 West 18<sup>th</sup> Street  
Houston, Texas 77092-8501

OR2020-09869

Dear Ms. Ellison:

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# 820008 (File No. DDO011020).

The Houston Independent School District (the "district") received a request for information pertaining to a named educator. You state you will release some information. You state the district has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> 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 section encompasses information protected by other statutes, such as section 21.062 of the Education Code, which provides, in part:

(a) During an investigation by the commissioner for an alleged incident of misconduct, the commissioner may issue a subpoena to compel:

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<sup>1</sup> The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that 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 that 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/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>

(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). You state the submitted information was subpoenaed or compiled in an investigation of an educator conducted by the TEA under section 21.062 of the Education Code. We understand the information at issue was submitted to the TEA in response to a subpoena issued by the commissioner. Based on these representations and our review, we conclude the district must withhold the submitted 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 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,

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/gw

Ref: ID# 820008

c: Requestor