



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 13, 2020

Ms. Kristi Godden  
Counsel for the Kingsville Independent School District  
O'Hanlon, Demerath & Castillo  
808 West Avenue  
Austin, Texas 78701-2208

OR2020-10681

Dear Ms. Godden:

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# 821426 (ID# KISD-19-008).

The Kingsville Independent School District (the "district"), which you represent, received a request for information pertaining to a specified investigation involving a named educator.<sup>1</sup> 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>2</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>3</sup> Additionally, you state the district notified the

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<sup>1</sup> You state the district sought and received clarification of the 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).

<sup>2</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/files/og/20060725usdoe.pdf>.

<sup>3</sup> We note the district did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(e). Nonetheless, as section 552.101 of the Government Code

Texas Education Agency (the “TEA”) of the request and of its opportunity to submit comments to this office as to why the information should not be released.<sup>4</sup> *See* Gov’t Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>5</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* §552.101. Section 552.101 encompasses information made confidential by other statutes, 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). You state the submitted information was subpoenaed in an investigation of an educator under section 21.062 of the Education Code. You inform us, and provide documentation showing, the information was submitted to the TEA in response to a subpoena issued by the commissioner. Based upon your 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.

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.

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can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>4</sup> As of the date of this letter, we have not received comments from the TEA.

<sup>5</sup> We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/be

Ref: ID# 821426

Enc. Submitted documents

c: Requestor  
(w/o enclosures)