



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 31, 2021

Mr. Joseph E. Hoffer  
Counsel for IDEA Public Schools  
Schulman, Lopez, Hoffer & Adelstein, L.L.P.  
845 Proton Road  
San Antonio, Texas 78258

OR2021-23837

Dear Mr. Hoffer:

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# 902598.

IDEA Public Schools ("IDEA"), which you represent, received a request for certain information pertaining to a former employee during a stated time period. IDEA states it is withholding access device numbers pursuant to section 552.136(c) of the Government Code.<sup>1</sup> IDEA claims the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. Additionally, IDEA states it notified the Texas Education Agency (the "TEA") of the right to submit comments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from TEA. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.116 of the Government Code provides the following:

---

<sup>1</sup> Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

<sup>2</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.

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

*Id.* § 552.116. Although TEA claims the information at issue consists of “audit working papers prepared or maintained by [its] Division of Educator Investigations in conjunction with a pending investigation of alleged educator misconduct[,]” we note the submitted information was created by IDEA and exists independently of TEA’s audit working papers. Section 552.116 does not apply to records that exist independently of the audit working papers. *See id.* § 552.116(a) (if information in audit working paper is also maintained in another record, that other record is not excepted from public disclosure by section 552.116). Thus, IDEA may not withhold any of the submitted information on behalf of TEA under section 552.116 of the Government Code.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

*Id.* § 552.022(a)(3). The submitted information consists of information in an account, contract, or voucher relating to the receipt or expenditure of funds by IDEA that is subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* Although IDEA raises sections 552.103 and 552.108 of the Government Code for the submitted information, these are discretionary exceptions that do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, IDEA may not withhold any portion of the submitted information under sections 552.103 and 552.108 of the Government Code. However, because sections 552.117, 552.130, and 552.137 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the information at issue.<sup>3</sup>

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). *See id.* §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, “A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee’s or former employee’s social security number.” *Id.* § 552.024(a-1). Thus, IDEA may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Therefore, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, IDEA must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the

---

<sup>3</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

extent the individual at issue did not timely request confidentiality under section 552.024, IDEA may not withhold the information we have marked under section 552.117(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code § 552.130*. Accordingly, IDEA must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, an e-mail address that a governmental entity maintains for one of its officials or employees, or a personal e-mail address belonging to an IDEA employee or official used to conduct official government business. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of “members of the public” for purposes of section 552.137(a)). Because we are unable to discern whether the e-mail addresses within the remaining information belong to IDEA employees or officials or fall within the scope of section 552.137(c), we must rule conditionally. To the extent the e-mail addresses at issue belong to members of the public and are not excluded by section 552.137(c), IDEA must withhold such e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See Gov't Code § 552.137(b)*. However, to the extent an e-mail address within the remaining information is excluded by section 552.137(c) or belongs to an IDEA employee or official, IDEA may not withhold that e-mail address under section 552.137 of the Government Code.

In summary, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, IDEA must withhold the information we have marked under section 552.117(a)(1) of the Government Code. IDEA must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. To the extent the e-mail addresses at issue belong to members of the public and are not excluded by section 552.137(c), IDEA must withhold such e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. IDEA must release the remaining information.

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,

Alexandra C. Burks  
Assistant Attorney General  
Open Records Division

ACB/be

Ref: ID# 902598

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Interested Party  
(w/o enclosures)