



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 28, 2022

Ms. Priscilla de Mata  
Counsel for the Socorro Independent School District  
Blanco Ordonez Mata & Wechsler, P.C.  
5715 Cromo Drive  
El Paso, Texas 79912

OR2022-02605

Dear Ms. de Mata:

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# 925697 (ORR#2022-072).

The Socorro Independent School District (the "district"), which you represent, received a request for specified communications involving a named district employee. You state the district will withhold student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> Additionally, you state release of the submitted information may implicate the interests of the Texas Education Agency (the "TEA").<sup>2</sup> Accordingly, you state, and provide

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<sup>1</sup> 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 student 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 education records. A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-SDOE-FERPA.pdf>.

<sup>2</sup> We note the district failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302; Open Records Decision No. 150 at 2 (1977). Because third party interests are at issue, we will consider whether the submitted information is excepted from

documentation showing, the district notified the TEA of the request for information and of the right to submit arguments 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 the TEA. We have reviewed the submitted information and considered the submitted argument.

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. Section 552.101 encompasses section 39.004 of the Education Code which provides, in part:

(e) Unless otherwise provided by law, all evidence collected by the agency in connection with a special investigation, including witness statements and videos of agency interviews, are confidential and not subject to disclosure under Chapter 552, Government Code, except that evidence described by this section may be disclosed:

- (1) to a person with a legitimate interest in the investigation; or
- (2) in connection with an administrative or other legal proceeding brought under this title.

Educ. Code § 39.004(e). The TEA states the submitted information was collected by its Division of Compliance and Inquiries in conjunction with a pending special investigation. The TEA also states the special investigation was authorized by section 39.003(a)(16) of the Education Code. *See id.* § 39.003 (listing circumstances in which the commissioner shall authorize investigations). Based on these representations and our review, we agree the information at issue constitutes evidence collected by the TEA in connection with a special investigation. Further, the TEA states sections 39.004(e)(1)-(2) are not applicable in this instance. Accordingly, the district must withhold the submitted information under section 552.101 in conjunction with section 39.004 on behalf of the TEA.

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

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disclosure under the Act, notwithstanding the district's violation of section 552.301 in requesting this decision.

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,

Pearlie Gault  
Assistant Attorney General  
Open Records Division

PG/ba

Ref: ID# 925697

Enc. Submitted documents

c: Requestor  
(w/o enclosures)