



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 10, 2022

Ms. Amanda M. Bigbee
General Counsel
Keller Independent School District
305 Keller Parkway
Keller, Texas 76248

OR2022-07229

Dear Ms. Bigbee:

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# 933252 (Ref. No. PIR0001938; TEA ID# 51352).

The Keller Independent School District (the "district") received a request for certain communications received by the district during a stated time period. The district claims the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. Additionally, the district states release of the submitted information may implicate the interests of the Texas Education Agency (the "TEA"). Accordingly, the district states it 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 arguments.

Initially, we note, and the district acknowledges, the district failed to comply with section 552.301 of the Government Code. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of

section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). The TEA objects to the release of the information at issue under sections 552.101 and 552.116 of the Government Code. Thus, we will consider whether the district may withhold the submitted information on behalf of the TEA.

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 [TEA] in connection with a special investigation, including witness statements and videos of agency interviews, are confidential and not subject to disclosure under [the Act], 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 information at issue was collected and prepared by the TEA’s Division of Investigations in conjunction with a pending special investigation. The TEA also states the special investigation was authorized by section 39.003(a)(17) 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. Accordingly, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 39.004(e) of the Education Code on behalf of the TEA.¹

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this 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/jxd

Ref: ID# 933252

c: Requestor

Third Party