



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2022

Mr. Montgomery Meitler
Senior Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2022-20068

Dear Mr. Meitler:

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# 958663 (TEA PIR# 53313).

The Texas Education Agency (the "agency") received a request for all complaints made to the agency regarding educator misconduct at the Gordon Independent School District during a defined period of time, including a specified complaint.¹ You state the agency has redacted student-identifying information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² 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 representative sample of information.³

¹ You state the agency sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (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, ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² 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-USDOE-FERPA.pdf>.

³ 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 Post Office Box 12548, Austin, Texas 78711-2548 • (512) 463-2100 • www.texasattorneygeneral.gov

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses section 39.004 of the Education Code, which provides, in part, as follows:

(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 [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). You state the submitted information was collected and prepared by the agency’s Division Compliance and Inquiries in connection with a pending special investigation. You also state 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 upon these representations and our review, we agree the information at issue constitutes evidence collected by the agency in connection with a special investigation. Accordingly, the agency must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 39.004(e) 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,

Nick Ybarra
Assistant Attorney General
Open Records Division

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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.

Mr. W. Montgomery Meitler - Page 3

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Enc. Submitted documents

c: Requestor
(w/o enclosures)