



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 26, 2022

Mr. Allen M. Keller  
Counsel for IDEA Public Schools  
Schulman, Lopez, Hoffer & Adelstein, LLP  
845 Proton Road  
San Antonio, Texas 78258

OR2022-33094

Dear Mr. Keller:

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# 980324.

IDEA Public Schools ("IDEA"), which you represent, received a request for a investigation involving the requestor. We understand IDEA redacted 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> You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, as follows:

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

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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-USDOE-FERPA.pdf>.

(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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation and is subject to section 552.022(a)(1). The information subject to section 552.022(a)(1) must be released unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* IDEA seeks to withhold the information at issue under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does 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 Gov't Code § 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). Therefore, IDEA may not withhold the submitted information under section 552.103 of the Government Code. As no other exceptions are raised, the submitted information must be released to this requestor.

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,

Cesar Mata  
Attorney  
Open Records Division

CM/mo

Ref: ID# 980324

Enc. Submitted documents

c: Requestor  
(w/o enclosures)