



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 3, 2022

Mr. Victor Cerda  
Counsel for the San Antonio Independent School District  
Escamilla & Poneck, L.L.P.  
700 North St. Mary's Street, Suite 850  
San Antonio, Texas 78205

OR2022-34188

Dear Mr. Cerda:

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# 978887 (TEA# 55682).

The San Antonio Independent School District (the "district"), which you represent, received a request for information pertaining to a named employee. You state the district has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.111, 552.114, 552.116, 552.136, and 552.147 of the Government Code. We have also received and considered comments from the Texas Education Agency ("TEA"). *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be

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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 an adult student's 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 educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>

released). We have considered the submitted arguments and reviewed the submitted information.

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. This exception encompasses information other statutes make confidential, such as section 21.062 of the Education Code. Section 21.062 provides, in relevant part:

(a) During an investigation by the commissioner for an alleged incident of misconduct, the commissioner may issue a subpoena to compel:

...

(2) the production, for inspection or copying, of relevant evidence that is located in this state.

...

(d) All information and materials subpoenaed or compiled in connection with an investigation described by Subsection (a) are confidential and not subject to disclosure under [the Act].

Educ. Code § 21.062(a)(2), (d); *see id.* §§ 5.001(3) (“Commissioner” means the commissioner of education), 21.001(1) (“Commissioner” includes a person designated by the commissioner). TEA informs us, and the submitted documentation reflects, the information at issue was subpoenaed or compiled in an investigation of educator misconduct under section 21.062 of the Education Code. Thus, we understand the information was submitted to TEA in response to a subpoena issued by the commissioner. Based on these representations and our review, we find the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.062(d) of the Education Code.<sup>2</sup>

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

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument(s) against disclosure of this information.

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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,

Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/mo

Ref: ID# 978887

c: Requestor