



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 28, 2022

Ms. Kacey M. Villafuerte
Counsel for the McAllen Independent School District
Walsh, Gallegos, Trevino, Kyle & Robinson, P.C.
P.O. Box 532146
Harlingen, Texas 78553

OR2022-36619

Dear Ms. Villafuerte:

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# 982225 (Ref. No. M003020-090222; TEA ID# 55885).

The McAllen Independent School District (the "district"), which you represent, received a request for three categories of information pertaining to the requestor's client. The district states it has redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ The district claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.² Additionally, the district notified the Texas Education Agency (the "TEA") of the right to submit comments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party

¹ 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>.

² We note, and the district acknowledges, the district failed to comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(e). Nonetheless, because section 552.101 of the Government Code and the interest of a third party can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of section 552.101 and third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

may submit comments stating why information should or should not be released). We have received comments from the TEA. 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.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, 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). The district states the information at issue was subpoenaed or compiled in an investigation of an educator conducted by the TEA under section 21.062 of the Education Code. The district also indicates the information at issue was submitted to the TEA in response to a subpoena issued by the commissioner. Based upon these representations and our review, we conclude 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.³

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

³ As our ruling is dispositive, we need not address the TEA’s arguments against disclosure of the submitted information.

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/pt

Ref: ID# 982225

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Interested Party
(w/o enclosures)