



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 7, 2022

Ms. Morgan B. Morrow  
Counsel for Winona Independent School District  
Walsh Gallegos Treviño Kyle & Robinson P.C.  
10375 Richmond Avenue, Suite 1357  
Houston, Texas 77042-4196

OR2022-37944

Dear Ms. Morrow:

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# 984695.

The Winona Independent School District (the "district"), which you represent, received a request for certain information relating to a specified topic during a defined time period. You state the district has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 37.108 of the Education Code, which provides, in part:

(a) Each school district or public junior college district shall adopt and implement a multihazard emergency operations plan for use in the district's facilities. The plan must address prevention, mitigation, preparedness,

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<sup>1</sup> We note, and you acknowledge, the district failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b). Nonetheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the district's violation of section 552.301 in requesting this decision.

response, and recovery as defined by the Texas School Safety Center in conjunction with the governor's office of homeland security and the commissioner of education or commissioner of higher education, as applicable. The plan must provide for:

- (1) training in responding to an emergency for district employees, including substitute teachers;
- (2) measures to ensure district employees, including substitute teachers, have classroom access to a telephone, including a cellular telephone, or another electronic communication device allowing for immediate contact with district emergency services or emergency services agencies, law enforcement agencies, health departments, and fire departments;
- (3) measures to ensure district communications technology and infrastructure are adequate to allow for communication during an emergency;
- (4) if the plan applies to a school district, mandatory school drills and exercises, including drills required under Section 37.114, to prepare district students and employees for responding to an emergency;
- (5) measures to ensure coordination with the Department of State Health Services and local emergency management agencies, law enforcement, health departments, and fire departments in the event of an emergency; and
- (6) the implementation of a safety and security audit as required by Subsection (b).

(b) At least once every three years, each school district or public junior college district shall conduct a safety and security audit of the district's facilities. To the extent possible, a district shall follow safety and security audit procedures developed by the Texas School Safety Center or a person included in the registry established by the Texas School Safety Center under Section 37.2091.

...

(c-1) Except as provided by Subsection (c-2), any document or information collected, developed, or produced during a safety and security audit conducted under Subsection (b) is not subject to disclosure under [the Act].

(c-2) A document relating to a school district's or public junior college district's multihazard emergency operations plan is subject to disclosure if

the document enables a person to:

(1) verify that the district has established a plan and determine the agencies involved in the development of the plan and the agencies coordinating with the district to respond to an emergency, including the Department of State Health Services, local emergency services agencies, law enforcement agencies, health departments, and fire departments;

(2) verify that the district's plan was reviewed within the last 12 months and determine the specific review dates;

(3) verify that the plan addresses the four phases of emergency management under Subsection (a);

...

(7) verify that the district has completed a safety and security audit under Subsection (b) and determine the date the audit was conducted, the person conducting the audit, and the date the district presented the results of the audit to the district's board of trustees; [and]

...

(9) if the district is a school district, verify that the district has established a visitor policy and identify the provisions governing access to a district building or other district property.

Educ. Code § 37.108(a), (b), (c-1), (c-2)(1)-(3), (7), (9). You state the information you marked was developed, collected, or produced during or for a safety and security audit under section 37.108(b). *See id.* § 37.108(b). Thus, the information you marked is generally confidential under section 37.108(c-1) of the Education Code. We note, however, some of the information you marked would enable a person to verify some of the information described in section 37.108(c-2). Thus, this information is not subject to section 37.108(c-1) of the Education Code and may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, with the exception of the information which would enable a person to verify the information described in section 37.108(c-2) of the Education Code, which must be released, the district must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 37.108(c-1) 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,

Pearlie Gault  
Assistant Attorney General  
Open Records Division

PG/pt

Ref: ID# 984695

c: Requestor