



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 15, 2026

Mr. Montgomery Meitler  
Deputy General Counsel for Public Information  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2026-015116

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# 26-006013 (TEA PIR# 2502477).

The Texas Education Agency (the “agency”) received a request for information pertaining to a named educator. The agency 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.<sup>1</sup> The agency states it does not maintain information responsive to a portion of the request.<sup>2</sup> The agency states it will release some of the requested information. The agency claims the submitted information is excepted from disclosure under section 552.101 of the Government Code and privileged under rule 192.5

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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/20060725USDOE-FERPA.pdf>

<sup>2</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

of the Texas Rules of Civil Procedure. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note, and the agency acknowledges some of the submitted information consists of a completed investigation that is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of a “completed report, audit, evaluation, or investigation made of, for, or by governmental body” unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under the Act or “other law.” Gov’t Code § 552.022(a)(1). The Texas Supreme Court has held the Texas Rules of Civil Procedure are “other law” for the purposes of section 552.022. *See In re city of Georgetown*, 53 S.W.3d 328,337 (Tex. 2001). Accordingly, we will address the agency’s claim under Texas Rule of Civil Procedure 192.5.

Rule 192.5 encompasses the attorney work product privilege. Rule 192.5 defines work product as:

- (1) Material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or party’s representatives, including the party’s attorney, consultants, sureties, indemnitors, insurers, employees, or agents; or
- (2) A communication made in anticipation of litigation or for trial between a party and the party’s representative or among a party’s representative, including consultants, sureties, indemnitors, insurers, employees, or agents.

TEX. R. CIV. P. 192.5(a). A governmental body seeking to withhold information under this exception bears the burden of demonstrating the information was created or developed for trial or in anticipation of litigation by or for a party or a party’s representative. *Id.* 192.5; Open Records Decision No. 677 at 6-8 (2002). In order for this office to conclude the information was made or developed in anticipation of litigation, we must be satisfied that:

- a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.

*Nat’l Tank Co. v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A “substantial chance” of litigation does not mean statistical probability, but rather “that litigation is more than merely an abstract possibility or unwarranted fear.” *Id.* at 204; ORR 677 at 7.

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<sup>3</sup> 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 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.

Furthermore, if a requestor seeks a governmental body's entire litigation file, the governmental body may assert the file is excepted from disclosure in its entirety because such a request implicates the attorney work product privilege. *See* ORD 677 at 5-6. Thus, in such a situation, if the governmental body demonstrates the file was created in anticipation of litigation, this office will presume the entire file is within the scope of the privilege. *See* Open Records Decision No. 647 at 5 (1996) (organization of attorney's litigation file necessarily reflects attorney's thought processes (citing *Nat'l Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458, 461 (Tex. 1993))); *see also* *Curry v. Walker*, 873 S.W.2d 379, 380 (Tex. 1994) (holding "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case").

The agency informs us it "regulates and oversees all aspects of the certification, continuing education, and enforcement of standards of conduct for certified educators in Texas public schools under the authority of [c]hapter 21 of the Education Code." *See* Educ. Code §§ 21.031(a), .041. The agency also explains it litigates enforcement proceedings under the Administrative Procedure Act (the "APA"), chapter 2001 of the Government Code. *See id.* § 21.041(b)(7); 19 T.A.C. § 249.3. The agency states the information at issue consists of the entire case file pertaining to an investigation of alleged educator misconduct. The agency also states the file was created by attorneys, legal staff, and other representatives of the agency in anticipation of litigation. Based on these representations, we conclude the agency may withhold the information it marked as attorney work product under Texas Rule of Civil Procedure 192.5.

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 section encompasses information made confidential by other statutes, such as section 22A.103 of the Education Code, which provides, in relevant part:

(a) During an investigation by the commissioner of an educator or person who is employed by or providing services to an educational entity for an alleged incident of misconduct, the commissioner may issue a subpoena to compel:

(1) the attendance of a relevant witness; or

(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 § 22A.103(a), (d); *see id.* §§ 5.001(3) ("Commissioner" means the commissioner of education), 21.001(1) ("Commissioner" includes a person designated by

the commissioner). The agency states the remaining information pertains to an investigation of educator misconduct under section 22A.103(a) of the Education Code. The agency also states the information at issue was submitted to the agency in response to a subpoena issued by the commissioner. Based upon these representations and our review, we conclude the agency must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 22A.103(d) of the Education Code.

In summary, the agency may withhold the information it marked as attorney work product under Texas Rule of Civil Procedure 192.5. The agency must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 22A.103(d) of the Education Code.

Finally, the agency asks this office to issue a previous determination permitting it to withhold certain information concerning investigations of educator misconduct under section 552.101 of the Government Code in conjunction with section 22A.103(d) of the Education Code without seeking a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant the agency's request on this matter. Therefore, this letter ruling authorizes the agency to withhold all information and materials subpoenaed or compiled by the agency in connection with an investigation described by section 22A.103(a) of the Education Code under section 552.101 of the Government Code in conjunction with section 22A.103(d) of the Education Code, as long as other state or federal law does not permit access to the information. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the agency need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7-8 (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

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,

Alexandra C. Burks  
Assistant Attorney General  
Open Records Division

ACB/sb

Ref: ID# 26-006013

c: Requestor