



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2014

Mr. W. Montgomery Meitler
Senior Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2014-01211

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# 511630 (TEA PIR# 20789).

The Texas Education Agency (the "agency") received a request for all information received that could potentially impact the teacher certification of a named individual. You state you have redacted certain information pursuant to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹The 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: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²We 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.

Section 552.101 of the Government Code exempts 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 protected by other statutes. You raise section 552.101 in conjunction with section 39.0302 of the Education Code, which provides, in relevant part:

(a) During an agency investigation or audit of a school district under Section 39.0301(e) or (f), an accreditation investigation under Section 39.057(a)(8) or (13), or an investigation by the State Board for Educator Certification ["SBEC"] of an educator for an alleged violation of an assessment instrument security procedure established under Section 39.0301(a), the commissioner [of education] may issue a subpoena to compel the attendance of a relevant witness or 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 or audit described by Subsection (a):

(1) are confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) are not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to any person other than:

(A) the commissioner [of education] or [SBEC], as applicable;

(B) agency employees or agents involved in the investigation, as applicable; and

(C) the office of the attorney general, the state auditor's office, and law enforcement agencies.

Educ. Code § 39.0302(a), (d). This section makes confidential all information subpoenaed or compiled in connection with an investigation by SBEC of an educator for an alleged violation of an assessment instrument security procedure established under section 39.0301(a). *Id.* § 39.0302; *see also id.* § 39.0301(a). You state, and provide documentation showing, the information at issue was compiled and submitted to the agency in response to a subpoena issued by the commissioner of education in the course of an agency accreditation investigation of El Paso Independent School District ("EPISD") conducted under section 39.057(a)(8) of the Education Code, as well as agency investigations of EPISD educators for alleged violations of assessment instrument security procedures

established under section 39.0301(a) of the Education Code.³ You state none of the release provisions of section 39.0302(d)(2) of the Education Code apply in this instance. Accordingly, we find the information at issue is confidential under section 39.0302(d)(1), and the agency must withhold the information at issue under section 552.101 of the Government Code on that basis.⁴

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/tch

Ref: ID# 511630

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the agency provides administrative functions and services to SBEC pursuant to section 21.035 of the Education Code.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure.