

Velva L. Price  
District Clerk  
Travis County  
D-1-GN-21-005246  
Victoria Benavides

D-1-GN-21-005246

CAUSE NO. \_\_\_\_\_

IDEA PUBLIC SCHOOLS,  
*Plaintiff,*

v.

KEN PAXTON, in his official capacity as  
TEXAS ATTORNEY GENERAL,  
*Defendant.*

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

250TH  
\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION FOR DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff IDEA Public Schools (“IDEA”) and files this Original Petition for Declaratory Judgment seeking relief from compliance with multiple determinations by Defendant Ken Paxton (“Defendant”), in his official capacity as Texas Attorney General (“Attorney General”), pursuant to the Texas Public Information Act, Chapter 552 of the Texas Government Code (“TPIA”) as follows:

**I. Discovery Control Plan**

1. Discovery in this case is intended to be conducted under Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

**II. Summary**

2. This suit is brought pursuant to TEX. GOV’T CODE § 552.324 to challenge the following listed open records letter rulings of the Attorney General:

	<b>Date of Request</b>	<b>Name of Requestor</b>	<b>Date of AG’s Decision</b>	<b>Attorney General ID#</b>	<b>Open Records Letter Ruling</b>
1	June 30, 2020	Dave Hendricks	August 31, 2021	ID#902598	OR2021-23837
2	July 22, 2020	Dave Hendricks	September 1, 2021	ID#902670	OR2021-23949
3	September 8, 2020	Gregg Wendorf	August 31, 2021	ID#902599	OR2021-23786
4	June 15, 2021	Carlos Soltero	September 1, 2021	ID#902683	OR2021-23920

3. IDEA seeks declaratory judgment that the information at issue in the above-listed letters is exempt from disclosure under the Texas Public Information Act, TEX. GOV'T CODE § 552.001 *et seq.*, as more specifically set out in the paragraphs below.

### **III. Parties**

4. IDEA is a non-profit corporation that operates open-enrollment charter schools throughout the State of Texas, with a Central Office located in Hidalgo County, Texas.

5. Defendant Ken Paxton is the Attorney General of the State of Texas, and is responsible for interpreting the TPIA and enforcing its provisions. He may be served with process at the William P. Clements Office Building, 300 West 15th Street, Austin, Texas 78701.

### **IV. Jurisdiction and Venue**

6. This is an action for declaratory judgment. This Court has jurisdiction over IDEA's claims pursuant to TEX. CONST. Art. 5, § 8; TEX. GOV'T CODE §§ 24.007–.008; and TEX. CIV. PRAC. & REM. CODE § 37.001 *et seq.*

7. Venue is mandatory in Travis County, Texas pursuant to TEX. GOV'T CODE § 552.324(a) and TEX. CIV. PRAC. & REM. CODE § 15.016.

8. In accordance with TEX. GOV'T CODE § 552.325(b), counsel for IDEA will notify the above-listed requestors in this matter by certified mail, return receipt requested, of the following:

- The existence of the suit, including the subject matter and cause number of the suit and the court in which the suit is filed;
- The requestor's right to intervene in the suit or to choose to not participate in the suit;
- The fact that the suit is against the Attorney General in Travis County District Court; and
- The address and phone number of the Office of the Attorney General.

## V. Suit for Declaratory Relief

9. The requested documents which are the subject of this action will be filed separately with the court, under seal, for *in camera* inspection, at the appropriate time. Specific information on each request is given in the following paragraphs.

10. When calculating the timelines for responses to the TPIA requests, IDEA's headquarters and central office were closed for general business and operating with limited skeleton crew basis due to COVID-19 health concerns, statewide emergency declaration and in response to emergency health orders issued by Hidalgo County and other controlling health authorities from July 6, 2020 to June 13, 2021. The days in that time period are not included in the timeline for responding to requests received right before and during that time period. IDEA's headquarters and central office reopened for business on June 14, 2021.

11. The TPIA requests listed in the chart above and that are being disputed are discussed in detail below and the arguments against disclosure follow.

### A. Summaries of Requests

#### REQUEST #1

##### *Dave Hendricks' June 30, 2020 request for former IDEA CFO's expense reports*

12. On or about June 30, 2020, IDEA received a TPIA request from Dave Hendricks requesting all expense reports submitted by IDEA's former CFO, Wyatt Truscheit, for the time period of January 1, 2018 through June 30, 2020 ("Request #1). See Exhibit 1 incorporated herein by reference.

13. On June 23, 2021 and June 30, 2021, IDEA timely submitted a request for an Attorney General determination in accordance with TEX. GOV'T CODE § 552.301 for Request #1. See

**Exhibit 2.**<sup>1</sup> IDEA argued that Request #1 sought records that fell under exceptions found in Tex. Gov't. Code §552.116 (audit working papers); Tex. Gov't Code §552.103 (litigation or settlement negotiations involving a state or political subdivision); and Tex. Gov't. Code §552.108 (certain law enforcement, corrections, and prosecutorial information). *See id.*

14. On August 31, 2021, the Attorney General, acting through Alexandra C. Burks, Assistant Attorney General, Open Records Division, issued a decision on IDEA's request for a determination. *See **Exhibit 3.*** Plaintiff received this decision through the mail on September 2, 2021. In this ruling, Defendant found that IDEA was not entitled to withhold information under section 552.116, section 552.103, or section 552.108 of the TPIA. The determination also noted that IDEA could withhold certain confidential employee contact information, information relating to a motor vehicle operator's license, and email addresses of a member of the public, in accordance with sections 552.117, 552.130, and 552.137 of the TPIA. *See id.*

15. IDEA submits that Defendant did not fully respond to IDEA's arguments under section 552.116 of the TPIA and that release of records identified by Defendant will cause harm to ongoing criminal investigations being conducted by law enforcement officials, and that Defendant erred in ordering records to be released to the requestor.

## **REQUEST #2**

### ***Dave Hendricks' July 22, 2020 request for former IDEA CEO/Superintendent's expense reports and credit card statements***

16. On or about July 22, 2020, IDEA received a TPIA request from Dave Hendricks requesting all expense reports submitted by IDEA's former CEO/Superintendent, JoAnn Gama, for the period

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<sup>1</sup> The requests submitted by IDEA to the Attorney General were sent with the requested records for review as required by Tex. Gov't. Code §552.301(e)(1)(D). The version of the letter sent to the requestor - sans attachments - is attached to this petition for each request made the subject of this request for declaratory relief.



of January 1, 2018 through June 30, 2020 (“Request #2). See Exhibit 4 incorporated herein by reference.

17. On June 25, 2021 and July 2, 2021, IDEA timely submitted a request for an Attorney General determination in accordance with TEX. GOV’T CODE § 552.301 for Request #3. See Exhibit 5. IDEA argued that Request #2 sought records that fell under exceptions found in Tex. Gov’t. Code §552.116 (audit working papers); Tex. Gov’t. Code §552.108 (certain law enforcement, corrections, and prosecutorial information); and Tex. Gov’t Code §552.103 (litigation or settlement negotiations involving a state or political subdivision). *Id.*

18. On September 1, 2021, the Attorney General, acting through Blake Brennan, Assistant Attorney General, Open Records Division, issued a decision on IDEA’s request for a determination. See Exhibit 6. IDEA received this decision through the mail on September 3, 2021. In this ruling, Defendant determined that IDEA could not withhold information under section 552.116 or section 552.108 of the TPIA. See *id.* Defendant also determined that certain portions of the records requested by Mr. Hendricks could be withheld under section 552.103 of the TPIA, as it related to pending litigation in which IDEA was involved at the time of the request. *Id.*

19. IDEA, submits that Defendant did not fully respond to IDEA’s arguments under section 552.116 of the TPIA and that release of records identified by Defendant will cause harm to ongoing criminal investigations being conducted by law enforcement officials, and that Defendant erred in ordering records to be released to the requestor.

**REQUEST #3**

***Gregg Wendorf's September 8, 2020 request for former IDEA COO's compensation and other information***

20. On or about September 8, 2020, IDEA received a request for information under the TPIA from Gregg Wendorf requesting various information about IDEA's former Chief Operations Officer, Irma Munoz, including her compensation, credit card statements, certain travel records, travel logs, as well as various information regarding ProDirect, a prior IDEA vendor. ("Request #3). See Exhibit 7 incorporated herein by reference.

21. On June 25, 2021 and July 2, 2021, IDEA timely submitted a request for an Attorney General determination in accordance with TEX. GOV'T CODE § 552.301 for Request #5. See Exhibit 8. In it, IDEA argued that Request #3 sought records that fell under exceptions found in Tex. Gov't. Code §552.116 (audit working papers); Tex. Gov't. Code §552.108 (certain law enforcement, corrections, and prosecutorial information); and Tex. Gov't Code §552.103 (litigation or settlement negotiations involving a state or political subdivision). *Id.*

22. On August 31, 2021, the Attorney General, acting through James M. Graham, Assistant Attorney General, Open Records Division, issued a decision on IDEA's request for a determination. See Exhibit 9. IDEA received this decision through the mail on September 2, 2021. In this ruling, Defendant identified certain records requested by Mr. Wendorf could be withheld under section 552.103 of the TPIA, as they related to pending litigation in which IDEA was involved at the time of the request. *Id.* However, Defendant also identified other portions of the records requested by Mr. Wendorf as subject to release under section 552.022 of the TPIA and determined that IDEA was not authorized to withhold those records under the TPIA. See *id.*

23. IDEA submits that Defendant did not fully respond to IDEA's arguments under section 552.116 of the TPIA and that release of records identified by Defendant will cause harm

to ongoing criminal investigations being conducted by law enforcement officials, and that Defendant erred in ordering records to be released to the requestor.

**REQUEST #4**

***Carlos Soltero June 15, 2020 request for his client's personnel file and other records***

24. On or about June 15, 2021, IDEA received a request for information under the TPIA from Carlos Soltero, the attorney for former IDEA COO, Irma Munoz, requesting copies of various personnel records for his client, grievance records for his client, and information on any investigations of his client. ("Request #4"). See **Exhibit 10** incorporated herein by reference.

25. On June 25, 2021 and July 6, 2021, IDEA timely submitted a request for an Attorney General determination in accordance with TEX. GOV'T CODE § 552.301 for Request #11. See **Exhibit 11**. IDEA argued that Request #4 sought records that fell under exceptions found in Tex. Gov't. Code §552.116 (audit working papers); Tex. Gov't. Code §552.108 (certain law enforcement, corrections, and prosecutorial information); Tex. Gov't Code §552.107 (certain legal matters) and Texas Rule of Evidence 503; and Tex. Gov't Code §552.103 (litigation or settlement negotiations involving the state or political subdivision). *Id.*

26. On September 1, 2021, the Attorney General, acting through Kimbell Kesling, Assistant Attorney General, Open Records Division, issued a decision on IDEA's request for a determination. See **Exhibit 12**. IDEA received this decision through the mail on September 3, 2021. In this ruling, Defendant identified certain records for release under section 552.552.022(a) of the TPIA. *Id.*

27. IDEA submits that Defendant did not fully respond to IDEA's arguments under section 552.116 of the TPIA and that release of records identified by Defendant will cause harm to ongoing criminal investigations being conducted by law enforcement officials, and that Defendant erred in ordering records to be released to the requestor.

### **Arguments Against Disclosure of Records**

28. Texas law makes clear that Section 552.108 of the Texas Government Code “specifically exempts from disclosure information which would reveal law enforcement techniques to the public, unduly interfere with law enforcement, and make it more difficult for an agency to do its job.” *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678 (Tex. 1995).

29. As noted in the requests for determination to the Attorney General’s office, law enforcement have expressed to IDEA’s counsel that IDEA should not release information related to the audit of financial transactions, as doing so could potentially interfere with an ongoing law enforcement investigation. Thus, further action is clearly contemplated, and any disclosure of this information would compromise law enforcement’s investigation. *See Ex Parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977) (The court, when interpreting predecessor to the TPIA, recognized the requestor’s considerations for allowing access to investigatory materials, held that the better policy reason is to deny access to the materials if it will unduly interfere with law enforcement and crime prevention.).

30. Therefore, as the release of the records Defendant has ordered IDEA to provide to the various requestors (or that would be releasable after exchanged in discovery) would compromise an investigation by a law enforcement agency, this Court should find that IDEA is not required to produce such records.

### **VI. Relief Sought**

For the foregoing reasons, Plaintiff IDEA Public Schools requests that the Court issue citation for Defendant Ken Paxton, in his official capacity as Texas Attorney General, to appear and answer, and that IDEA be awarded a judgment against Defendant for the following:

1. A declaration that IDEA is not required to comply with TPIA Requests #1 through Request #4 or the Attorney General’s determinations regarding the same;

2. That IDEA be awarded reasonable attorneys' fees incurred in bringing this action;
3. That IDEA recover all costs of court; and
4. That IDEA have such other and further relief, both at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

**SCHULMAN, LOPEZ,  
HOFFER & ADELSTEIN, LLP**

*/s/ Joseph E. Hoffer*

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**Joseph E. Hoffer**

State Bar No. 24049462

Email: [REDACTED]

**Allen M. Keller**

State Bar No. 24070039

Email: [REDACTED]

**Ricardo R. Lopez**

State Bar No. 24013059

Email: [REDACTED]

845 Proton Road

San Antonio, Texas 78258

Telephone: 210-538-5385

Facsimile: 210-538-5384

**ATTORNEYS FOR PLAINTIFF  
IDEA PUBLIC SCHOOLS**

# **Exhibit 1**

Progress Times

**From:** Dave Hendricks <[REDACTED]>  
**Sent:** Tuesday, June 30, 2020 2:00 PM  
**To:** Information Request <[Information.Request@ideapublicschools.org](mailto:Information.Request@ideapublicschools.org)>  
**Subject:** Public Information Request: IDEA Public Schools / Wyatt Truscheit expense reports

To whom it may concern,

Under the Texas Public Information Act, I write to request:

> All expense reports submitted by IDEA Public Schools Chief Financial Officer Wyatt Truscheit from Jan. 1, 2018, to June 30, 2020.

I can accept the responsive records via email to [REDACTED] or via postal mail to:

Dave Hendricks  
[REDACTED]  
McAllen TX 78501

I can accept correspondence about the request via email to [REDACTED] or via postal mail to:

Dave Hendricks  
[REDACTED]  
McAllen TX 78501

Please let me know if you have any questions about the request.

Additionally, please reply to this email to confirm receipt.

Thanks,

Dave

Dave Hendricks  
Cell | [REDACTED]

# **Exhibit 2**

Progress Times





Schulman,  
Lopez, Hoffer  
& Adelstein, LLP

845 PROTON RD  
SAN ANTONIO, TEXAS 78258  
TELEPHONE: (210) 538-5385 FACSIMILE: (210) 538-5384  
WWW.SLH-LAW.COM & WWW.K12LAW.COM

JOSEPH E. HOFFER  
[REDACTED]

*ATTORNEYS AND COUNSELORS FOR TEXAS PUBLIC SCHOOLS AND LOCAL GOVERNMENT*

June 23, 2021

**Certified Mail, Return Receipt**  
**Requested No. 7020 0640 0000 5342 8542**

The Honorable Ken Paxton  
Attorney General, State of Texas  
**ATTN: Open Records Section**  
P.O. Box 12548  
Austin, Texas 78711-2548

**RE: Open Record Request by David Hendricks (June 30, 2020 Request)**

Hon. General Paxton:

My firm represents IDEA Public Schools (“IDEA”), an open-enrollment charter school system operating public charter school campuses throughout the state of Texas. On June 30, 2020, IDEA received a written Texas Public Information Act (“TPIA”) request from David Hendricks. A copy of Mr. Hendrick’s request is included as Attachment 1 to this letter.

The timeline for IDEA’s submission of this letter to the Attorney General is as follows:

June 30, 2020	Request received
July 1–2, 2020	Business days one through two
July 3, 2020	<b>IDEA offices closed on Fridays for summer hours; not included in timeline for responding to request</b>
<b>July 6, 2020 – February 12, 2021</b>	<b>IDEA’s headquarters and central office closed for general business and operating with limited skeleton crew basis due to COVID-19 health concerns and in response to emergency health orders issued by Hidalgo County health</b>

*Schulman, Lopez, Hoffer & Adelstein, LLP—Trusted advisers and advocates for Texas independent school districts, charter schools and local governments offering accessible, responsive legal representation to our clients.*

**Exhibit 2 - Plaintiff’s Original Petition for Declaratory Judgment**

**authorities; not included in timeline for responding to request<sup>1</sup>**

**February 15–19, 2021**

**IDEA’s headquarters and central office closed for business due to Winter Storm Uri; not included in timeline for responding to request**

**February 22 – June 13, 2021**

**IDEA’s headquarters and central office remain closed for general business and operating with limited skeleton crew basis due to COVID-19 health concerns and in response to emergency health orders issued by Hidalgo County health authorities; not included in timeline for responding to request**

June 14, 2021

IDEA’s headquarters and central office reopen for business and come off of skeleton crew; business day three

June 15–18, 2021

Business days four through seven

June 21–23, 2021

Business days eight through ten; deadline for submission of this letter

In accordance with the Governor’s emergency declarations due to the COVID-19 pandemic and the Attorney General’s guidance regarding skeleton crew status, this submission is timely filed.

IDEA has authorized my office to assist with this request. On its behalf, I hereby request a decision from your office regarding Mr. Hendricks’s June 30, 2020 request. Some of the requested documents meet exceptions to disclosure listed in Chapter 552 of the Texas Government Code. The particular exceptions which may apply include one or more of the following: 552.101 (Confidential Information); 552.102 (Personnel Information/College Transcripts); 552.103 (Litigation or Settlement Exception); 552.104 (Information Related to Competition or Bidding); 552.105 (Information Related to Location or Price of Property); 552.106 (Certain Legislative Documents); 552.107 (Certain Legal Matters); 552.108 (Certain Law Enforcement, Corrections, and Prosecutorial Records); 552.1081 (Certain Information Regarding Execution of Convict); 552.1085 (Sensitive Crime Scene Image); 552.109 (Private Communications of an

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<sup>1</sup> Please note that IDEA’s headquarters has been operating on a skeleton crew basis since July 6, 2020, meaning that IDEA was generally unable to access records or process public information requests. We also recognize guidance from the Attorney General stating that the following days do not count as “business days” for purposes of calculating deadlines for responding to public information requests: (i) skeleton crew days are not business days; (ii) a day on which IDEA’s administrative offices are closed is not a business day; and (iii) closure days due to public health or epidemic response do not count as business days, even if staff continue to work remotely or if limited staff are on-site but involved directly in the public health or epidemic response. This guidance from the Attorney General is found online at <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/catastrophe-notice/update-calculation-business-days-and-covid-19>, and is also included in printed form as Attachment 2 to this letter.

Elected Office Holder); 552.110 (Trade Secrets and Certain Commercial Information or Financial Information); 552.1101 (Proprietary Information); 552.111 (Agency Memoranda); 552.112 (Certain Information Relating to Regulation of Financial Institutions or Securities); 552.113 Geological or Geophysical Information); 552.114 (Student Records); 552.115 (Birth and Death Records); 552.116 (Audit Working Papers); 552.117 (Certain Addresses, Telephone Numbers, Social Security Numbers and Personal Family Information); 552.1175 (Peace Officer Information); 552.1176 (Certain Information Maintained by the State Bar); 552.1177 (Certain Information Related to Humane Disposition of Animal); 552.118 (Official Prescription Program Information); 552.119 (Certain Photographs of Peace Officers); 552.120 (Certain Rare Books and Original Manuscripts); 552.121 (Certain Documents Held for Historical Research); 552.122 (Test Items); 552.123 (Name of Applicant for Chief Executive Officer of Institution of Higher Education); 552.1235 (Identity of Private Donor to Institution of Higher Education); 552.124 (Library or Library System Records); 552.125 (Certain Audits); 552.126 (Name of Applicant for Superintendent of Public School District); 552.127 (Personal Information Relating to Neighborhood Crime Watch Organization Participants); 552.128 (Potential Vendor or Contractor Information); 552.129 (Motor Vehicle Inspection Information); 552.130 (Certain Motor Vehicle Records); 552.131 (Certain Economic Development Information); 552.132 (Crime Victim or Claimant Information); 552.1325 (Crime Victim Impact Statement); 552.133 (Public Power Utility Competitive Matters); 552.134 (Certain Inmate Information); 552.135 (Information Held by a School District); 552.136 (Credit Card, Debit Card, Charge Card and Access Device Numbers); 552.137 (Email Addresses); 552.138 (Family Violence Center/Sexual Assault Program Information); 552.139 (Computer Security Information); 552.140 (Military Discharge Records); 552.141 (Marriage License Application Information); 552.142 (Records Subject to Order of Nondisclosure); 552.143 (Investment Information); 552.144 (Working Papers/Electronic Communications of State Office of Administrative Hearings Administrative Law Judges); 552.145 (Texas No-Call List); 552.146 (Certain Communications with Assistant or Employee of Legislative Budget Board); 552.147 (Social Security Numbers); 552.148 (Certain Personal Information Regarding Minors); 552.149 (Certain Comptroller or Appraisal District Records); 552.150 (Information That Might Compromise Safety of Employee or Officer of Hospital District); 552.151 (Information Regarding Select Agents); 552.152 (Information That Might Compromise Safety of Public Employee or Officer); 552.153 (Proprietary Records and Trade Secrets); 552.154 (Name of Applicant for Executive Director, Chief Investment Officer, or Chief Audit Executive of Teacher Retirement System of Texas); 552.155 (Certain Property Tax Appraisal Photographs); 552.156 (Continuity of Operations Plan); 552.158 (Personal Information Regarding Applicant for Appointment by Governor); 552.159 (Certain Work Schedules); 552.159 (Certain Personal Information Obtained by Flood Control District); 552.159 (Certain Information Provided by Out-of-State Health Care Provider); 552.160 (Personal Information of Applicant for Disaster Recovery Funds); 552.022 (Categories of Public Information) including but not limited to section 522.022(a)(16); 552.024 (Address and Telephone Number); 552.026 (Education Records); 552.027 (Information Available Commercially); 552.305 (Third Party Privacy and Property Interests); Texas Evidence Code § 503; Rule 192.5 of the Texas Rules of Civil Procedure and Texas Education Code § 21.355.

June 23, 2021

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IDEA will submit responsive documents shortly, and its written justification, as required by Government Code § 552.301. Thank you for your attention to this matter.

Cordially,

**SCHULMAN, LOPEZ,  
HOFFER & ADELSTEIN, LLP**



Joseph E. Hoffer

Enclosures

cc: Mr. Dave Hendricks  
Email: [REDACTED]



Schulman,  
Lopez, Hoffer  
& Adelstein, LLP

845 PROTON RD  
SAN ANTONIO, TEXAS 78258  
TELEPHONE: (210) 538-5385 FACSIMILE: (210) 538-5384  
WWW.SLH-LAW.COM & WWW.K12LAW.COM

JOSEPH E. HOFFER  
[REDACTED]

*ATTORNEYS AND COUNSELORS FOR TEXAS PUBLIC SCHOOLS AND LOCAL GOVERNMENT*

June 30, 2021

**Certified Mail, Return Receipt**  
**Requested No. 7020 0640 0000 5342 8665**

The Honorable Ken Paxton  
Attorney General, State of Texas  
**ATTN: Open Records Section**  
P.O. Box 12548  
Austin, Texas 78711-2548

**RE: Open Record Request by David Hendricks (June 30, 2020 Request)**

Hon. General Paxton:

On behalf of our client, IDEA Public Schools (“IDEA”), we hereby request your opinion pursuant to the Texas Public Information Act (“TPIA” or the “Act”), Chapter 552 of the Texas Government Code, regarding the disclosure of certain information requested by Dave Hendricks. By redacted copy of this letter, we are advising Mr. Hendricks of IDEA’s position with respect to this matter.

IDEA received Mr. Hendricks’s request on June 30, 2020. A copy of Mr. Hendricks’s request is included as Exhibit 1 to this letter.

IDEA submitted a ten-day letter to your office on June 23, 2021. A copy of that ten-day letter is included as Exhibit 2 to this letter. The timeline for submitting this fifteen-day letter is as follows:

June 30, 2020	Request received
July 1–2, 2020	Business days one through two
July 3, 2020	IDEA offices closed on Fridays for summer hours; not included in timeline for responding to request
<b>July 6, 2020 – June 13, 2021</b>	<b>IDEA’s headquarters and central office closed for general business and operating with limited skeleton crew basis due to COVID-19 health</b>

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**Exhibit 2 - Plaintiff’s Original Petition for Declaratory Judgment**

**concerns and in response to emergency health orders issued by Hidalgo County health authorities; not included in timeline for responding to request<sup>1</sup>**

**February 15–19, 2021**

**IDEA’s headquarters and central office were also separately closed for business due to Winter Storm Uri; not included in timeline for responding to request**

**February 22 – June 13, 2021**

**IDEA’s headquarters and central office remained closed for general business and operating with limited skeleton crew basis due to COVID-19 health concerns and in response to emergency health orders issued by Hidalgo County health authorities; not included in timeline for responding to request**

June 14, 2021

IDEA’s headquarters and central office reopen for business and come off of skeleton crew; business day three

June 15–18, 2021

Business days four through seven

June 21–23, 2021

Business days eight through ten

June 24–25, 2021

Business days eleven through twelve

June 28–30, 2021

Business days thirteen through fifteen; deadline for submission of this letter.

In accordance with the Governor’s emergency declarations due to the COVID-19 pandemic and the Attorney General’s guidance regarding skeleton crew status, this submission is timely filed.

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<sup>1</sup> Please note that IDEA’s headquarters has been operating on a skeleton crew basis since July 6, 2020, meaning that IDEA was generally unable to access records or process public information requests. We also recognize guidance from the Attorney General stating that the following days do not count as “business days” for purposes of calculating deadlines for responding to public information requests: (i) skeleton crew days are not business days; (ii) a day on which IDEA’s administrative offices are closed is not a business day; and (iii) closure days due to public health or epidemic response do not count as business days, even if staff continue to work remotely or if limited staff are on-site but involved directly in the public health or epidemic response. This guidance from the Attorney General is found online at <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/catastrophe-notice/update-calculation-business-days-and-covid-19>, and is also included in printed form as Attachment 2 to the ten-day letter previously submitted to your office.

Mr. Hendricks is requesting the following information from IDEA:

*All expense reports submitted by IDEA Public Schools Chief Financial Officer Wyatt Truscheit from January 1, 2018 to June 30, 2020.*

See Exhibit 1. Included as Exhibit 3 to this letter are a representative sampling of expense report documentation submitted by Mr. Truscheit from January 1, 2018 through June 30, 2020.<sup>2</sup> IDEA hereby requests your decision regarding the application of the following public disclosure exceptions authorized by the TPIA to the records requested by Mr. Hendricks:

**1) Texas Government Code § 552.116 (audit working papers)**

Section 552.116 of the TPIA provides:

- (a) An audit, working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a *school district*, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.
- (b) In this section:
  - (1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.
  - (2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

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<sup>2</sup> IDEA has identified several thousand pages of expense reports that are potentially responsive to Mr. Hendricks’s request. Due to the voluminous nature of these records, IDEA is submitting a representative sample of records for your review. See Tex. Gov’t Code § 552.301(e)(1)(D) (allowing for submission of representative sample if a voluminous amount of information is requested). Additionally, IDEA has redacted credit card, debit card, charge card, and other bank account information from the records submitted to your office without the necessity of requesting a determination, as allowed by the TPIA. See *id.* § 552.136(b)-(c) (noting that a credit card, debit card, charge card, or access device number of an account operated by a governmental body is confidential, and may be redacted without the necessity of requesting an Attorney General determination”).



- (A) intra-agency and interagency communications; and
- (B) drafts of the audit report or portions of those drafts.

Texas Gov't Code §552.116(a)-(b) (emphasis added).<sup>3</sup>

In order to claim the audit working paper exception, IDEA must demonstrate that the working papers are from an audit authorized or required by an appropriate legal authority, and must identify that authority.

By way of background information, Wyatt Truscheit formerly served as IDEA's Chief Financial Officer ("CFO"). Shortly after the start of calendar year 2020, IDEA became aware of potential discrepancies in the manner in which Mr. Truscheit had been accounting for IDEA's funds. Immediately after learning of these potential discrepancies, IDEA launched an independent audit and legal review of financial transactions authorized by and involving Mr. Truscheit. In conducting this internal review and audit, IDEA has engaged the services of a former federal prosecutor, a CPA Forensic Auditing firm, and a retired IRS Criminal Investigative Division Special Agent who now conducts financial investigations. This team of auditors and investigators have been conducting a thorough multi-year review of IDEA's financial transactions and those of various chiefs and administrators. During the course of IDEA's audit, Mr. Truscheit resigned his employment, effective July 16, 2020. The investigation remains open and ongoing with respect to Mr. Truscheit's transactions.

Public funds and charitable donations received by IDEA are held in trust by IDEA for the benefit of its students. *See* Tex. Educ. Code § 12.107. Additionally, in using public funds, IDEA and its governing body and school officers are "held to the standard of care and fiduciary duties that a trustee owes a beneficiary under Texas law." 19 Tex. Admin. Code § 100.1043(a)(2). IDEA is also required to adhere to generally accepted accounting standards of fiscal management, which includes GAAP, GAAS, GAGAS, the Uniform Guidance (2 CFR 200, a/k/a EDGAR) and the COSO *Integrated Framework* and GAO Green Book (Standards for Internal Control in the Federal Government). *See* Tex. Educ. Code § 12.115(a)(1)(2). Under these laws and rules, IDEA is required to maintain a system of controls designed to mitigate and, when warranted, address possible misuse of public funds through audits and investigations. Further, any misapplication of public funds "is subject to the civil and criminal laws governing misuse or misapplication of Texas public funds." 19 Tex. Admin. Code § 100.1043(a)(1). IDEA therefore has an affirmative obligation to conduct audits of its finances, such as the instant one, and to determine whether public funds have been properly managed.

The expense reports requested by Mr. Hendricks, and the representative sample of those records included as Exhibit 3 to this letter, are directly related to the audit currently being

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<sup>3</sup> The Texas Education Code provides that open-enrollment charter schools (such as IDEA) are treated as traditional school districts for all purposes related to the TPIA. *See* Tex. Educ. Code §12.1051(b) ("With respect to the operation of an open-enrollment charter school, any requirement in Chapter 551 or 552, Government Code, or another law that concerns open meetings or the availability of information, that applies to a school district, the board of trustees of a school district, or public school student applies to an open-enrollment charter school, the governing body of a charter holder, the governing body of an open-enrollment charter school, or students attending an open-enrollment charter school.").



conducted by IDEA into Mr. Truscheit's accounting of public funds and should therefore be withheld from disclosure under section 552.116 of the Act.

Moreover, due to the nature of concerns related to Mr. Truscheit's accounting for public funds, IDEA has informed the Texas Education Agency ("TEA" or "Agency") of the review and audit. The Agency has requested that IDEA provide copies of all exhibits and documentation considered by IDEA's auditors/investigators; these records would include those requested by Mr. Hendricks. The Agency has also stated that IDEA should assert the audit working paper exception on behalf of TEA by requesting an Attorney General opinion. [REDACTED] Exhibit 4 to this letter. We have copied TEA on this letter, and they remain free to submit additional arguments to the Attorney General should they deem necessary to do so. Once again, the information requested by Mr. Hendricks should be withheld from disclosure under section 552.116 of the Act.

**2) Texas Government Code § 552.103 (litigation or settlement negotiations involving the state or a political subdivision)**

Section 552.103(a) of the TPIA, commonly known as the "litigation exception," provides in relevant part:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be. A party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

- (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure . . . only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Tex. Gov't Code § 552.103(a), (c). In order to claim this exception, IDEA must show that (1) civil or criminal litigation is pending or reasonably anticipated; and (2) the requested information is related to that litigation. *See Univ. of Tex. Law. Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

Here, IDEA is currently involved in litigation brought by Mr. Truscheit concerning his separation from employment, as Mr. Truscheit has filed a lawsuit alleging breach of contract claims. A copy of the pending lawsuit is included as Exhibit 5 to this letter. Mr. Truscheit's conduct with respect to use and accounting of public funds will be a major issue in that litigation should IDEA's jurisdictional challenges not prevail. Moreover, IDEA reasonably contemplated that litigation involving Mr. Truscheit would be pending on the date Mr. Hendricks submitted his request due to the nature of the internal financial investigation started by IDEA and the serious consequences related to Mr. Truscheit's employment based on the conduct involved in that litigation. Thus, litigation involving Mr. Truscheit is currently pending, and IDEA reasonably anticipates that the records requested by Mr. Hendricks will be at issue in this pending litigation. For these reasons, IDEA requests a determination from the Attorney General on whether the information requested by Mr. Hendricks is excepted from disclosure under section 552.103 of the TPIA.

**3) Texas Government Code §552.108 (certain law enforcement, corrections, and prosecutorial information)**

Section 552.108 of the TPIA provides in relevant part:

(a) Information held by law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime...

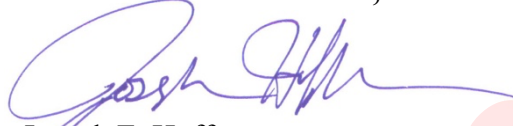
Tex. Gov't Code § 552.108(a)(1).

IDEA further submits that documents and information requested by Mr. Hendricks, and of which a representative sample is included in Exhibit 3, are excepted from disclosure under section 552.108 of the TPIA as law enforcement records that, if released, could interfere with the detection, investigation, or prosecution of a crime. *See id.* IDEA has directed legal counsel report the matters under investigation to various law enforcement agencies. The Texas Rangers have expressed to IDEA's special counsel that IDEA should not release information related to the audit of financial transactions while the authorities continue to review the situation and assess the potential for a criminal investigation, as the release of information could interfere with a review of Mr. Truscheit's actions by law enforcement authorities. For this reason, IDEA submits that the information requested by Mr. Hendricks should be withheld under section 552.108 of the Act.

Thank you for your attention to this matter. Please do not hesitate to contact me should you require additional information in order to render your determination.

Cordially,

**SCHULMAN, LOPEZ,  
HOFFER & ADELSTEIN, LLP**



Joseph E. Hoffer

Enclosures

cc: Mr. Dave Hendricks  
Email: [REDACTED]  
(Redacted copy of letter only)

# **Exhibit 3**

Progress Times



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 31, 2021

Mr. Joseph E. Hoffer  
Counsel for IDEA Public Schools  
Schulman, Lopez, Hoffer & Adelstein, L.L.P.  
845 Proton Road  
San Antonio, Texas 78258

OR2021-23837

Dear Mr. Hoffer:

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# 902598.

IDEA Public Schools ("IDEA"), which you represent, received a request for certain information pertaining to a former employee during a stated time period. IDEA states it is withholding access device numbers pursuant to section 552.136(c) of the Government Code.<sup>1</sup> IDEA claims the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. Additionally, IDEA states it 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 may submit comments stating why information should or should not be released). We have received comments from TEA. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.116 of the Government Code provides the following:

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<sup>1</sup> Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

<sup>2</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.

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

*Id.* § 552.116. Although TEA claims the information at issue consists of “audit working papers prepared or maintained by [its] Division of Educator Investigations in conjunction with a pending investigation of alleged educator misconduct[,]” we note the submitted information was created by IDEA and exists independently of TEA’s audit working papers. Section 552.116 does not apply to records that exist independently of the audit working papers. *See id.* § 552.116(a) (if information in audit working paper is also maintained in another record, that other record is not excepted from public disclosure by section 552.116). Thus, IDEA may not withhold any of the submitted information on behalf of TEA under section 552.116 of the Government Code.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

*Id.* § 552.022(a)(3). The submitted information consists of information in an account, contract, or voucher relating to the receipt or expenditure of funds by IDEA that is subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* Although IDEA raises sections 552.103 and 552.108 of the Government Code for the submitted information, these are discretionary exceptions that do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, IDEA may not withhold any portion of the submitted information under sections 552.103 and 552.108 of the Government Code. However, because sections 552.117, 552.130, and 552.137 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the information at issue.<sup>3</sup>

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). *See id.* §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, “A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee’s or former employee’s social security number.” *Id.* § 552.024(a-1). Thus, IDEA may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Therefore, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, IDEA must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the

---

<sup>3</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).



extent the individual at issue did not timely request confidentiality under section 552.024, IDEA may not withhold the information we have marked under section 552.117(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, IDEA must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, an e-mail address that a governmental entity maintains for one of its officials or employees, or a personal e-mail address belonging to an IDEA employee or official used to conduct official government business. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of “members of the public” for purposes of section 552.137(a)). Because we are unable to discern whether the e-mail addresses within the remaining information belong to IDEA employees or officials or fall within the scope of section 552.137(c), we must rule conditionally. To the extent the e-mail addresses at issue belong to members of the public and are not excluded by section 552.137(c), IDEA must withhold such e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See* Gov't Code § 552.137(b). However, to the extent an e-mail address within the remaining information is excluded by section 552.137(c) or belongs to an IDEA employee or official, IDEA may not withhold that e-mail address under section 552.137 of the Government Code.

In summary, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, IDEA must withhold the information we have marked under section 552.117(a)(1) of the Government Code. IDEA must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. To the extent the e-mail addresses at issue belong to members of the public and are not excluded by section 552.137(c), IDEA must withhold such e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. IDEA must release the remaining information.

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,

Alexandra C. Burks  
Assistant Attorney General  
Open Records Division

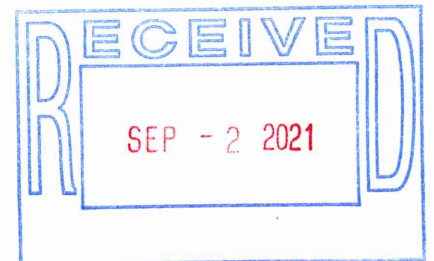
ACB/be

Ref: ID# 902598

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Interested Party  
(w/o enclosures)



# **Exhibit 4**

Progress Times

**From:** Dave Hendricks <[REDACTED]>

**Sent:** Wednesday, July 22, 2020 2:22 PM

**To:** Information Request <[Information.Request@ideapublicschools.org](mailto:Information.Request@ideapublicschools.org)>

**Subject:** Public Information Request: IDEA Public Schools / JoAnn Gama expense reports and credit card statements

To whom it may concern,

Under the Texas Public Information Act, I write to request:

> All expense reports submitted by JoAnn Gama from Jan. 1, 2018, to June 30, 2020.

> All credit card statements from Jan. 1, 2018, to June 30, 2020 for all IDEA Public Schools credit cards issued to JoAnn Gama.

I can accept the responsive records via email to [REDACTED] or via postal mail to:

Dave Hendricks

[REDACTED]  
McAllen TX 78501

I can accept correspondence about the request via email to [REDACTED] or via postal mail to:

Dave Hendricks

[REDACTED]  
McAllen TX 78501

Please let me know if you have any questions about the request.

Additionally, please reply to this email to confirm receipt.

Thanks,

Dave

Dave Hendricks

Cell | [REDACTED]

# **Exhibit 5**

Progress Times



Schulman,  
Lopez, Hoffer  
& Adelstein, LLP

845 PROTON RD  
SAN ANTONIO, TEXAS 78258  
TELEPHONE: (210) 538-5385 FACSIMILE: (210) 538-5384  
WWW.SLH-LAW.COM & WWW.K12LAW.COM

JOSEPH E. HOFFER

ATTORNEYS AND COUNSELORS FOR TEXAS PUBLIC SCHOOLS AND LOCAL GOVERNMENT

June 25, 2021

**Certified Mail, Return Receipt**  
**Requested No. 7020 0640 0000 5342 8573**

The Honorable Ken Paxton  
Attorney General, State of Texas  
**ATTN: Open Records Section**  
P.O. Box 12548  
Austin, Texas 78711-2548

**RE: Open Record Request by David Hendricks (July 22, 2020 Request)**

Hon. General Paxton:

My firm represents IDEA Public Schools (“IDEA”), an open-enrollment charter school system operating public charter school campuses throughout the state of Texas. On July 22, 2020, IDEA received a written Texas Public Information Act (“TPIA”) request from David Hendricks. A copy of Mr. Hendrick’s request is included as Attachment 1 to this letter.

The timeline for IDEA’s submission of this letter to the Attorney General is as follows:

July 22, 2020 Request received

**July 6, 2020 – February 12, 2021 IDEA’s headquarters and central office closed for general business and operating with limited skeleton crew basis due to COVID-19 health concerns and in response to emergency health orders issued by Hidalgo County health authorities; not included in timeline for responding to request<sup>1</sup>**

<sup>1</sup> Please note that IDEA’s headquarters has been operating on a skeleton crew basis since July 6, 2020, meaning that IDEA was generally unable to access records or process public information requests. We also recognize guidance from the Attorney General stating that the following days do not count as “business days” for purposes of calculating deadlines for responding to public information requests: (i) skeleton crew days are not business days; (ii) a day on which IDEA’s administrative offices are closed is not a business day; and (iii) closure days due to public health or epidemic response do not count as business days, even if staff continue to work remotely or if limited staff are on-site but involved directly in the public health or epidemic response. This guidance from the Attorney General is found

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**February 15–19, 2021**

**IDEA’s headquarters and central office closed for business due to Winter Storm Uri; not included in timeline for responding to request**

**February 22 – June 13, 2021**

**IDEA’s headquarters and central office remain closed for general business and operating with limited skeleton crew basis due to COVID-19 health concerns and in response to emergency health orders issued by Hidalgo County health authorities; not included in timeline for responding to request**

June 14, 2021

IDEA’s headquarters and central office reopen for business and come off of skeleton crew; business day one

June 15–18, 2021

Business days two through five

June 21–25, 2021

Business days six through ten; deadline for submission of this letter

In accordance with the Governor’s emergency declarations due to the COVID-19 pandemic and the Attorney General’s guidance regarding skeleton crew status, this submission is timely filed.

IDEA has authorized my office to assist with this request. On its behalf, I hereby request a decision from your office regarding Mr. Hendricks’s July 22, 2020 request. Some of the requested documents meet exceptions to disclosure listed in Chapter 552 of the Texas Government Code. The particular exceptions which may apply include one or more of the following: 552.101 (Confidential Information); 552.102 (Personnel Information/College Transcripts); 552.103 (Litigation or Settlement Exception); 552.104 (Information Related to Competition or Bidding); 552.105 (Information Related to Location or Price of Property); 552.106 (Certain Legislative Documents); 552.107 (Certain Legal Matters); 552.108 (Certain Law Enforcement, Corrections, and Prosecutorial Records); 552.1081 (Certain Information Regarding Execution of Convict); 552.1085 (Sensitive Crime Scene Image); 552.109 (Private Communications of an Elected Office Holder); 552.110 (Trade Secrets and Certain Commercial Information or Financial Information); 552.1101 (Proprietary Information); 552.111 (Agency Memoranda); 552.112 (Certain Information Relating to Regulation of Financial Institutions or Securities); 552.113 Geological or Geophysical Information); 552.114 (Student Records); 552.115 (Birth and Death Records); 552.116 (Audit Working Papers); 552.117 (Certain Addresses, Telephone Numbers, Social Security Numbers and Personal Family Information); 552.1175 (Peace Officer Information); 552.1176 (Certain Information Maintained by the State Bar); 552.1177 (Certain Information Related to Humane Disposition of Animal); 552.118 (Official Prescription Program Information); 552.119 (Certain Photographs of Peace Officers); 552.120 (Certain Rare Books and

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online at <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/catastrophe-notice/update-calculation-business-days-and-covid-19>, and is also included in printed form as Attachment 2 to this letter.

Original Manuscripts); 552.121 (Certain Documents Held for Historical Research); 552.122 (Test Items); 552.123 (Name of Applicant for Chief Executive Officer of Institution of Higher Education); 552.1235 (Identity of Private Donor to Institution of Higher Education); 552.124 (Library or Library System Records); 552.125 (Certain Audits); 552.126 (Name of Applicant for Superintendent of Public School District); 552.127 (Personal Information Relating to Neighborhood Crime Watch Organization Participants); 552.128 (Potential Vendor or Contractor Information); 552.129 (Motor Vehicle Inspection Information); 552.130 (Certain Motor Vehicle Records); 552.131 (Certain Economic Development Information); 552.132 (Crime Victim or Claimant Information); 552.1325 (Crime Victim Impact Statement); 552.133 (Public Power Utility Competitive Matters); 552.134 (Certain Inmate Information); 552.135 (Information Held by a School District); 552.136 (Credit Card, Debit Card, Charge Card and Access Device Numbers); 552.137 (Email Addresses); 552.138 (Family Violence Center/Sexual Assault Program Information); 552.139 (Computer Security Information); 552.140 (Military Discharge Records); 552.141 (Marriage License Application Information); 552.142 (Records Subject to Order of Nondisclosure); 552.143 (Investment Information); 552.144 (Working Papers/Electronic Communications of State Office of Administrative Hearings Administrative Law Judges); 552.145 (Texas No-Call List); 552.146 (Certain Communications with Assistant or Employee of Legislative Budget Board); 552.147 (Social Security Numbers); 552.148 (Certain Personal Information Regarding Minors); 552.149 (Certain Comptroller or Appraisal District Records); 552.150 (Information That Might Compromise Safety of Employee or Officer of Hospital District); 552.151 (Information Regarding Select Agents); 552.152 (Information That Might Compromise Safety of Public Employee or Officer); 552.153 (Proprietary Records and Trade Secrets); 552.154 (Name of Applicant for Executive Director, Chief Investment Officer, or Chief Audit Executive of Teacher Retirement System of Texas); 552.155 (Certain Property Tax Appraisal Photographs); 552.156 (Continuity of Operations Plan); 552.158 (Personal Information Regarding Applicant for Appointment by Governor); 552.159 (Certain Work Schedules); 552.159 (Certain Personal Information Obtained by Flood Control District); 552.159 (Certain Information Provided by Out-of-State Health Care Provider); 552.160 (Personal Information of Applicant for Disaster Recovery Funds); 552.022 (Categories of Public Information) including but not limited to section 522.022(a)(16); 552.024 (Address and Telephone Number); 552.026 (Education Records); 552.027 (Information Available Commercially); 552.305 (Third Party Privacy and Property Interests); Texas Evidence Code § 503; Rule 192.5 of the Texas Rules of Civil Procedure and Texas Education Code § 21.355.

IDEA will submit responsive documents shortly, and its written justification, as required by Government Code § 552.301. Thank you for your attention to this matter.

Cordially,

**SCHULMAN, LOPEZ,  
HOFFER & ADELSTEIN, LLP**



Joseph E. Hoffer

Enclosures

cc: Mr. Dave Hendricks  
Email: [REDACTED]

Progress Times





Schulman,  
Lopez, Hoffer  
& Adelstein, LLP

845 PROTON RD  
SAN ANTONIO, TEXAS 78258  
TELEPHONE: (210) 538-5385 FACSIMILE: (210) 538-5384  
WWW.SLH-LAW.COM & WWW.K12LAW.COM

JOSEPH E. HOFFER  
[REDACTED]

*ATTORNEYS AND COUNSELORS FOR TEXAS PUBLIC SCHOOLS AND LOCAL GOVERNMENT*

July 2, 2021

**Certified Mail, Return Receipt  
Requested No. 7019 1640 0001 1656 4416**

The Honorable Ken Paxton  
Attorney General, State of Texas  
**ATTN: Open Records Section**  
P.O. Box 12548  
Austin, Texas 78711-2548

**RE: Open Record Request by David Hendricks (July 22, 2020 Request)**

Hon. General Paxton:

On behalf of our client, IDEA Public Schools (“IDEA”), we hereby request your opinion pursuant to the Texas Public Information Act (“TPIA” or the “Act”), Chapter 552 of the Texas Government Code, regarding the disclosure of certain information requested by Dave Hendricks. By redacted copy of this letter, we are advising Mr. Hendricks of IDEA’s position with respect to this matter.

IDEA received Mr. Hendricks’s request on July 22, 2020. A copy of his request is included as Exhibit 1 to this letter. IDEA submitted a ten-day letter to your office on June 25, 2021. A copy of that ten-day letter is included as Exhibit 2 to this letter. The timeline for submitting this fifteen-day letter is as follows:

July 22, 2020

Request received

**July 6, 2020 – June 13, 2021**

**IDEA’s headquarters and central office closed for general business and operating with limited skeleton crew basis due to COVID-19 health concerns and in response to emergency health orders issued by Hidalgo County health authorities; not included in timeline for responding to request<sup>1</sup>**

<sup>1</sup> Please note that IDEA’s headquarters has been operating on a skeleton crew basis since July 6, 2020, meaning that IDEA was generally unable to access records or process public information requests. We also recognize guidance from the Attorney General stating that the following days do not count as “business days” for purposes of calculating

*Schulman, Lopez, Hoffer & Adelstein, LLP—Trusted advisers and advocates for Texas independent school districts, charter schools and local governments offering accessible, responsive legal representation to our clients.*

<b>February 15–19, 2021</b>	<b>IDEA’s headquarters and central office was also separately closed for business due to Winter Storm Uri; not included in timeline for responding to request</b>
<b>February 22 – June 13, 2021</b>	<b>IDEA’s headquarters and central office remained closed for general business and operating with limited skeleton crew basis due to COVID-19 health concerns and in response to emergency health orders issued by Hidalgo County health authorities; not included in timeline for responding to request</b>
June 14, 2021	IDEA’s headquarters and central office reopen for business and come off of skeleton crew; business day one
June 15–18, 2021	Business days two through five
June 21–25, 2021	Business days six through ten
June 28–July 2, 2021	Business days eleven through fifteen; deadline for submitting this letter

In accordance with the Governor’s emergency declarations due to the COVID-19 pandemic and the Attorney General’s guidance regarding skeleton crew status, this submission is timely filed.

Through his request, Mr. Hendricks is seeking the following information from IDEA:

*All expense reports submitted by JoAnn Gama from Jan. 1, 2018 to June 30, 2020.*

*All credit card statements from Jan. 1, 2018 to June 30, 2018 for all IDEA Public Schools credit cards issued to Jo Ann Gama.*

See Exhibit 1.

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deadlines for responding to public information requests: (i) skeleton crew days are not business days; (ii) a day on which IDEA’s administrative offices are closed is not a business day; and (iii) closure days due to public health or epidemic response do not count as business days, even if staff continue to work remotely or if limited staff are on-site but involved directly in the public health or epidemic response. This guidance from the Attorney General is found online at <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/catastrophe-notice/update-calculation-business-days-and-covid-19>, and is also included in printed form as Attachment 2 to the ten-day letter previously submitted to your office.

By way of background information, shortly after the start of calendar year 2020, IDEA was made aware of potential discrepancies in the manner in which IDEA's former Chief Financial Officer had been accounting for IDEA funds. Immediately after learning of these potential discrepancies, IDEA launched an independent audit of the financial transactions authorized by multiple chiefs and administrators working out of IDEA's headquarters in Weslaco, Texas. This included transactions involving, among others, Jo Ann Gama, IDEA's former CEO and Superintendent. In conducting this internal review and audit, IDEA has engaged the services of a former federal prosecutor, a CPA Forensic Auditing firm, and a retired IRS Criminal Investigative Division Special Agent who now conducts financial investigations to assist with the audit. This team of auditors and investigators have been conducting a thorough multi-year review of IDEA's financial transactions and those of various chiefs and administrators. During the course of this investigation, Ms. Gama was separated from employment with IDEA. IDEA's investigation remains open and ongoing with respect to financial transactions involving certain chiefs and administrators.

IDEA hereby requests your decision regarding the application of the following public disclosure exceptions authorized by the TPIA to the records requested by Mr. Hendricks:

**1. Texas Government Code § 552.116 (audit working papers)**

Section 552.116 of the TPIA provides:

(a) An audit, working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a *school district*, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or

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<sup>2</sup> IDEA has [REDACTED]. Due to the voluminous nature of these records, IDEA is submitting a representative sample of records for your review. See Tex. Gov't Code § 552.301(e)(1)(D) (allowing for submission of representative sample if a voluminous amount of information is requested). Additionally, IDEA has redacted credit card, debit card, charge card, and other bank account information from the records submitted to your office without the necessity of requesting a determination, as allowed by the TPIA. See *id.* § 552.136(b)-(c) (noting that a credit card, debit card, charge card, or access device number of an account operated by a governmental body is confidential, and may be redacted without the necessity of requesting an Attorney General determination").

other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

- (A) intra-agency and interagency communications; and
- (B) drafts of the audit report or portions of those drafts.

Texas Gov’t Code §552.116(a)-(b) (emphasis added)<sup>3</sup>

In order to claim the audit working paper exception, IDEA must demonstrate that the working papers are from an audit authorized or required by an appropriate legal authority, and must identify that authority.

As noted above, IDEA has been conducting a thorough investigation of financial transactions authorized by various IDEA chiefs and administrators, including Ms. Gama, and this investigation remains ongoing. Due to the nature of concerns identified during this investigation, IDEA has informed the Texas Education Agency (“TEA” or “Agency”) of the ongoing review and audit. The Agency has requested that IDEA provide copies of all exhibits and documentation considered by IDEA’s auditors/investigators; [REDACTED]

[REDACTED]. The Agency has also stated that IDEA should assert the audit working paper exception on behalf of TEA by requesting an Attorney General opinion if IDEA receives record requests for information related to the ongoing audit. [REDACTED]

[REDACTED] TEA is being made aware of Mr. Hendricks’s request, and they remain free to submit additional arguments to the Attorney General should they deem necessary to do so. IDEA submits that [REDACTED] [REDACTED] must be withheld under the audit working paper exception, as requested by the Agency.

Public funds and charitable donations received by IDEA are held in trust by IDEA for the benefit of its students. *See* Tex. Educ. Code § 12.107. Additionally, in using public funds, IDEA and its governing body and school officers are “held to the standard of care and fiduciary duties that a trustee owes a beneficiary under Texas law.” 19 Tex. Admin. Code § 100.1043(a)(2). IDEA is also required to adhere to generally accepted accounting standards of fiscal management, which

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<sup>3</sup> The Texas Education Code provides that open-enrollment charter schools (such as IDEA) are treated as traditional school districts for all purposes related to the TPIA. *See* Tex. Educ. Code §12.1051(b) (“With respect to the operation of an open-enrollment charter school, any requirement in Chapter 551 or 552, Government Code, or another law that concerns open meetings or the availability of information, that applies to a school district, the board of trustees of a school district, or public school student applies to an open-enrollment charter school, the governing body of a charter holder, the governing body of an open-enrollment charter school, or students attending an open-enrollment charter school.”).

includes GAAP, GAAS, GAGAS, the Uniform Guidance (2 CFR 200, a/k/a EDGAR) and the COSO *Integrated Framework* and GAO Green Book (Standards for Internal Control in the Federal Government). *See* Tex. Educ. Code § 12.115(a)(1)(2). Under these laws and rules, IDEA is required to maintain a system of controls designed to mitigate and, when warranted, address possible misuse of public funds through audits and investigations. Further, any misapplication of public funds “is subject to the civil and criminal laws governing misuse or misapplication of Texas public funds.” 19 Tex. Admin. Code § 100.1043(a)(1). IDEA therefore has an affirmative obligation to conduct periodic audits of its finances, such as the instant one, and to determine whether public funds have been properly managed.

The records requested by Mr. Hendricks, [REDACTED] [REDACTED] have been shared with IDEA’s special counsel as part of the ongoing investigation and audit and are therefore directly related to IDEA’s continuing audit of financial transactions authorized by certain chiefs and administrators. These records should be withheld from disclosure under section 552.116 of the TPIA as audit working papers.

**2. Texas Government Code §552.108 (certain law enforcement, corrections, and prosecutorial information)**

Section 552.108 of the TPIA provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime...

IDEA further submits that documents and information requested by Mr. Hendricks, [REDACTED] [REDACTED] are excepted from disclosure under section 552.108 of the TPIA as law enforcement records that, if released, could interfere with the detection, investigation, or prosecution of a crime. *See id.* IDEA has directed legal counsel report the matters under investigation to various law enforcement agencies. The Texas Rangers have expressed to IDEA’s special counsel that IDEA should not release information related to the audit of financial transactions, as doing so could potentially interfere with a review by law enforcement officials. For this reason, IDEA submits that the information requested by Mr. Hendricks should be withheld under section 552.108 of the Act.

**3. Texas Government Code § 552.103 (litigation or settlement negotiations involving the state or a political subdivision)**

IDEA submits that [REDACTED] should be excepted from disclosure under section 552.103 of the TPIA, which provides, in relevant part:

a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political

subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Tex. Gov't Code § 552.103(a), (c). In order to be entitled to claim this exception, IDEA must demonstrate that (1) civil or criminal litigation is pending or reasonably anticipated and (2) the requested information is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see also* Tex. Att'y Gen. ORD-0024 (2001); Tex. Att'y Gen. ORD-551 (1990).

The Attorney General has long held "litigation," for purposes of section 552.103, includes "contested cases" conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* Open Records Decision No. 588 (1991).

Here, Ms. Gama has retained legal counsel and through legal counsel has filed a grievance related to her separation from employment [REDACTED]

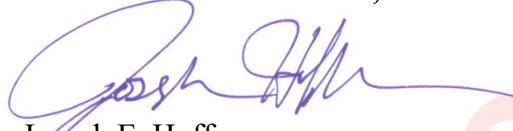
[REDACTED] IDEA's personnel policies establish process for termination grievances; this process allows for a terminated employee to request a review of the separation decision by the Chief Human Assets Officer, who then issues a decision. If the terminated employee is dissatisfied, he or she may appeal through IDEA's general employee complaint and grievance process, which ultimately allows for an appeal to IDEA's Board of Directors. At that stage, a grievant may be represented by counsel and present evidence to the Board of Directors. A [REDACTED]

[REDACTED] As Ms. Gama has submitted a terminated employee grievance, "litigation" (as interpreted by the Attorney General) is currently pending. The information requested by Mr. Hendricks is directly related to that litigation and, for that reason, IDEA is entitled to withhold [REDACTED] under section 552.103 of the TPIA. *See* Open Records Letter Ruling OR2019-20194 (July 24, 2019) (allowing charter school to withhold records under section 552.103 due to employee's filing of grievance related to employment with school).

Thank you for your consideration in this matter. Please feel free to contact me should you have questions.

Cordially,

**SCHULMAN, LOPEZ,  
HOFFER & ADELSTEIN, LLP**



Joseph E. Hoffer

Enclosures

cc: Mr. Dave Hendricks  
Email: [REDACTED]  
(Redacted copy of letter only)



# **Exhibit 6**

Progress Times





KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 1, 2021

Mr. Joseph E. Hoffer  
Counsel for IDEA Public Schools  
Schulman, Lopez, Hoffer & Adelstein, L.L.P.  
845 Proton Road  
San Antonio, Texas 78258

OR2021-23949

Dear Mr. Hoffer:

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# 902670.

IDEA Public Schools ("IDEA"), which you represent, received a request for expense reports and certain credit card statements pertaining to a named individual during a stated period of time. You state IDEA is withholding certain information pursuant to section 552.136(c) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.116 of the Government Code. Additionally, you state IDEA notified the Texas Education Agency (the "TEA") of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party 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 representative sample of information.<sup>2</sup>

Section 552.116 of the Government Code provides the following:

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<sup>1</sup> Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

<sup>2</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 that those records contain substantially different types of information than that submitted to this office.

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

*Id.* § 552.116. Although the TEA claims the information at issue consists of “audit working papers prepared or maintained by [its] Division of Educator Investigations in conjunction with a pending investigation of alleged educator misconduct[,]” we note the submitted information was created by IDEA and exists independently of the TEA’s audit working papers. Section 552.116 does not apply to records that exist independently of the audit working papers. *See id.* § 552.116(a) (if information in audit working paper is also maintained in another record, that other record is not excepted from public disclosure by section 552.116). Therefore, IDEA may not withhold any portion of the submitted information on behalf of TEA under section 552.116 of the Government Code.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, as follows:

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

*Id.* § 552.022(a)(3). Some of the submitted information, which we marked, consists of information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body subject to section 552.022(a)(3) of the Government Code. This information must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3). Although you seek to withhold the information subject to section 552.022(a)(3) under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, IDEA may not withhold any portion of the information subject to section 552.022(a)(3) of the Government Code under sections 552.103 or 552.108 of the Government Code. As no further arguments against disclosure have been raised for this information, IDEA must release the information we marked pursuant to section 552.022(a)(3) of the Government Code. However, we will consider your arguments under section 552.103 and 552.108 for the remaining information at issue.

Section 552.103 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law*

*Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). See ORD 551.

For purposes of section 552.103, “litigation” includes contested cases conducted in a quasi-judicial forum. Open Records Decision Nos. 588 at 2 (1991), 474 at 6 (1987) (disciplinary action before Texas State Board of Pharmacy), 368 at 2 (1983) (administrative hearing before Commissioner of Insurance), 301 at 1-2 (1982). Likewise, “contested cases” conducted under the Texas Administrative Procedure Act, chapter 2001 of the Government Code, constitute “litigation” for purposes of section 552.103. See, e.g., ORDs 588 at 7 (State Board of Insurance proceeding), 301 at 2 (hearing before Public Utilities Commission). Factors this office considers in determining whether an administrative proceeding is conducted in a quasi-judicial forum include whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. See ORD 588 at 3-4.

You state, prior to IDEA’s receipt of the present request, the individual named in the request filed a grievance with IDEA. You explain this grievance remains unresolved. You indicate grievances filed with IDEA are “litigation” in that IDEA follows administrative procedures in handling such disputes. You further indicate IDEA’s grievance process is a multi-level hearing process wherein various administrators initially hear the grievance, and IDEA’s Board of Directors ultimately evaluates the grievance. You explain that during these hearings the grievant is allowed to be represented by counsel and present evidence to IDEA. Based upon these representations, we find you have demonstrated IDEA’s administrative procedures for grievances are conducted in a quasi-judicial forum, and thus, constitute litigation for purposes of section 552.103. Therefore, we agree litigation was pending when IDEA received the present request. We also find you have established the information at issue is related to the pending litigation for purposes of section 552.103(a). Accordingly, IDEA may withhold the remaining information under section 552.103 of the Government Code.<sup>3</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. See Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

In summary, IDEA must release the information we marked pursuant to section 552.022(a)(3) of the Government Code. IDEA may withhold the remaining information under section 552.103 of the Government 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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/jxd

Ref: ID# 902670

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)





FC PKG RTL

neopost

09/01/2021

**US POSTAGE \$005.50<sup>0</sup>**



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04112204676

OFFICIAL BUSINESS

STATE OF TEXAS

PENALTY FOR PRIVATE USE

JXD



OPEN RECORDS DIVISION - 014  
POST OFFICE BOX 12548  
AUSTIN TEXAS 78711-2548



Joseph E. Hoffer  
Counsel for IDEA Public Schools  
Schulman, Lopez, Hoffer & Adelstein, L.L.P.  
845 Proton Road  
San Antonio, Texas 78258

# **Exhibit 7**

Progress Times

From: Advance News <[REDACTED]>  
Sent: Tuesday, September 8, 2020 12:17 PM  
To: Information Request <[Information.Request@ideapublicschools.org](mailto:Information.Request@ideapublicschools.org)>  
Subject: Public Information Reques

Please confirm receipt. Thank you.

gregg wendorf  
advance publishing llc

Progress Times



# *Advance Publishing LLC*

217 West Park Avenue, Pharr, Texas, 78577

Sept. 8, 2020

**IDEA Public Schools**

**Weslaco, Texas**

**Public Information Request**

**Dear Officer for Public Records:**

This request is made under the Texas Public Information Act, Chapter 552, Texas Government Code, which guarantees the public's access to information in the custody of governmental agencies. I respectfully request the following information:

- Salary, bonus, life insurance, employee retirement payments paid by IDEA to Irma Munoz over the past five years.
- All IDEA Public Schools Credit Card Statements for Irma Munoz and her assistant for the past five years.
- All payments made by IDEA Public Schools to Pro Direct over the last five years.
- Charter or private air travel records for Irma Munoz while working at IDEA over the past five years. Any flight manifests, passenger manifests, calendar notations for private air travel by Irma Munoz along with stated purpose of trip. Any logs where husband of Irma Chapa, Oscar Munoz, or children were on the flights.
- From 2016 to present: Any travel logs kept by transportation department or individual drivers regarding travel of Irma Munoz or family members of Irma Munoz.
- From 2016 to present: Any and all concerts that Irma Munoz attended at AT&T Center along with names of all guests she invited and whether or not they are

employees of IDEA. If not, the nature of the relationship of guests and Irma Munoz.

- Documents indicating the company that publishes the Impact Magazine and quotes or bid documents showing how that company was selected.
- All documentation on the bid process for Pro-Direct that shows what their bid was, what their proposal was, and any other submitted proposals.
- Any and all documentation that shows Irma Munoz received permission, in writing from the board or the CEO, to supply the uniforms for IDEA students.
- Any and all documents regarding either a RFQ, an RFP, or a bid for said uniforms.
- Any and all first-class airplane ticket receipts for Irma Munoz and/or those in her company while way on IDEA business.

In the interest of expediency, and to minimize the research and/or duplication burden on your staff, I would be pleased to personally examine the relevant records if you would grant me immediate access to the requested material. Additionally, and since time is a factor, please communicate with me by telephone or email rather than by mail. My telephone number is 956 [REDACTED] and my email address is [REDACTED]

Disclosure of this information is in the public interest because providing a copy of the information primarily benefits the general public. I therefore request a waiver of all fees and charges pursuant to Section 552.267 of the act.

I shall look forward to hearing from you promptly, as specified in the law. Thank you for your cooperation.

**Sincerely,**

**Gregg Wendorf**

**Advance Publishing LLC**

956 [REDACTED]

# **Exhibit 8**

Progress Times



Schulman,  
Lopez, Hoffer  
& Adelstein, LLP

845 PROTON RD  
SAN ANTONIO, TEXAS 78258  
TELEPHONE: (210) 538-5385 FACSIMILE: (210) 538-5384  
WWW.SLH-LAW.COM & WWW.K12LAW.COM

JOSEPH E. HOFFER  
[REDACTED]

*ATTORNEYS AND COUNSELORS FOR TEXAS PUBLIC SCHOOLS AND LOCAL GOVERNMENT*

June 25, 2021

**Certified Mail, Return Receipt**  
**Requested No. 7020 0640 0000 5342 8634**

The Honorable Ken Paxton  
Attorney General, State of Texas  
**ATTN: Open Records Section**  
P.O. Box 12548  
Austin, Texas 78711-2548

**RE: Open Record Request by Gregg Wendorf**

Hon. General Paxton:

My firm represents IDEA Public Schools (“IDEA”), an open-enrollment charter school system operating public charter school campuses throughout the state of Texas. On September 8, 2020, IDEA received a written Texas Public Information Act (“TPIA”) request from Gregg Wendorf. A copy of Mr. Wendorf’s request is included as Attachment 1 to this letter.

The timeline for IDEA’s submission of this letter to the Attorney General is as follows:

September 8, 2020

Request received

**July 6, 2020 – February 12, 2021**

**IDEA’s headquarters and central office closed for general business and operating with limited skeleton crew basis due to COVID-19 health concerns and in response to emergency health orders issued by Hidalgo County health authorities; not included in timeline for responding to request<sup>1</sup>**

<sup>1</sup> Please note that IDEA’s headquarters has been operating on a skeleton crew basis since July 6, 2020, meaning that IDEA was generally unable to access records or process public information requests. We also recognize guidance from the Attorney General stating that the following days do not count as “business days” for purposes of calculating deadlines for responding to public information requests: (i) skeleton crew days are not business days; (ii) a day on which IDEA’s administrative offices are closed is not a business day; and (iii) closure days due to public health or epidemic response do not count as business days, even if staff continue to work remotely or if limited staff are on-site but involved directly in the public health or epidemic response. This guidance from the Attorney General is found

*Schulman, Lopez, Hoffer & Adelstein, LLP—Trusted advisers and advocates for Texas independent school districts, charter schools and local governments offering accessible, responsive legal representation to our clients.*

**Exhibit 8 - Plaintiff’s Original Petition for Declaratory Judgment**

**February 15–19, 2021**

**IDEA’s headquarters and central office closed for business due to Winter Storm Uri; not included in timeline for responding to request**

**February 22 – June 13, 2021**

**IDEA’s headquarters and central office remain closed for general business and operating with limited skeleton crew basis due to COVID-19 health concerns and in response to emergency health orders issued by Hidalgo County health authorities; not included in timeline for responding to request**

June 14, 2021

IDEA’s headquarters and central office reopen for business and come off of skeleton crew; business day one

June 15–18, 2021

Business days two through five

June 21–25, 2021

Business days six through ten; deadline for submission of this letter

In accordance with the Governor’s emergency declarations due to the COVID-19 pandemic and the Attorney General’s guidance regarding skeleton crew status, this submission is timely filed.

IDEA has authorized my office to assist with this request. On its behalf, I hereby request a decision from your office regarding Mr. Wendorf’s September 8, 2020 TPIA request. Some of the requested documents meet exceptions to disclosure listed in Chapter 552 of the Texas Government Code. The particular exceptions which may apply include one or more of the following: 552.101 (Confidential Information); 552.102 (Personnel Information/College Transcripts); 552.103 (Litigation or Settlement Exception); 552.104 (Information Related to Competition or Bidding); 552.105 (Information Related to Location or Price of Property); 552.106 (Certain Legislative Documents); 552.107 (Certain Legal Matters); 552.108 (Certain Law Enforcement, Corrections, and Prosecutorial Records); 552.1081 (Certain Information Regarding Execution of Convict); 552.1085 (Sensitive Crime Scene Image); 552.109 (Private Communications of an Elected Office Holder); 552.110 (Trade Secrets and Certain Commercial Information or Financial Information); 552.1101 (Proprietary Information); 552.111 (Agency Memoranda); 552.112 (Certain Information Relating to Regulation of Financial Institutions or Securities); 552.113 Geological or Geophysical Information); 552.114 (Student Records); 552.115 (Birth and Death Records); 552.116 (Audit Working Papers); 552.117 (Certain Addresses, Telephone Numbers, Social Security Numbers and Personal Family Information); 552.1175 (Peace Officer Information); 552.1176 (Certain Information Maintained by the State Bar); 552.1177 (Certain Information Related to Humane Disposition of Animal); 552.118 (Official Prescription Program Information); 552.119 (Certain Photographs of Peace Officers); 552.120 (Certain Rare Books and

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online at <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/catastrophe-notice/update-calculation-business-days-and-covid-19>, and is also included in printed form as Attachment 2 to this letter.

Original Manuscripts); 552.121 (Certain Documents Held for Historical Research); 552.122 (Test Items); 552.123 (Name of Applicant for Chief Executive Officer of Institution of Higher Education); 552.1235 (Identity of Private Donor to Institution of Higher Education); 552.124 (Library or Library System Records); 552.125 (Certain Audits); 552.126 (Name of Applicant for Superintendent of Public School District); 552.127 (Personal Information Relating to Neighborhood Crime Watch Organization Participants); 552.128 (Potential Vendor or Contractor Information); 552.129 (Motor Vehicle Inspection Information); 552.130 (Certain Motor Vehicle Records); 552.131 (Certain Economic Development Information); 552.132 (Crime Victim or Claimant Information); 552.1325 (Crime Victim Impact Statement); 552.133 (Public Power Utility Competitive Matters); 552.134 (Certain Inmate Information); 552.135 (Information Held by a School District); 552.136 (Credit Card, Debit Card, Charge Card and Access Device Numbers); 552.137 (Email Addresses); 552.138 (Family Violence Center/Sexual Assault Program Information); 552.139 (Computer Security Information); 552.140 (Military Discharge Records); 552.141 (Marriage License Application Information); 552.142 (Records Subject to Order of Nondisclosure); 552.143 (Investment Information); 552.144 (Working Papers/Electronic Communications of State Office of Administrative Hearings Administrative Law Judges); 552.145 (Texas No-Call List); 552.146 (Certain Communications with Assistant or Employee of Legislative Budget Board); 552.147 (Social Security Numbers); 552.148 (Certain Personal Information Regarding Minors); 552.149 (Certain Comptroller or Appraisal District Records); 552.150 (Information That Might Compromise Safety of Employee or Officer of Hospital District); 552.151 (Information Regarding Select Agents); 552.152 (Information That Might Compromise Safety of Public Employee or Officer); 552.153 (Proprietary Records and Trade Secrets); 552.154 (Name of Applicant for Executive Director, Chief Investment Officer, or Chief Audit Executive of Teacher Retirement System of Texas); 552.155 (Certain Property Tax Appraisal Photographs); 552.156 (Continuity of Operations Plan); 552.158 (Personal Information Regarding Applicant for Appointment by Governor); 552.159 (Certain Work Schedules); 552.159 (Certain Personal Information Obtained by Flood Control District); 552.159 (Certain Information Provided by Out-of-State Health Care Provider); 552.160 (Personal Information of Applicant for Disaster Recovery Funds); 552.022 (Categories of Public Information) including but not limited to section 522.022(a)(16); 552.024 (Address and Telephone Number); 552.026 (Education Records); 552.027 (Information Available Commercially); 552.305 (Third Party Privacy and Property Interests); Texas Evidence Code § 503; Rule 192.5 of the Texas Rules of Civil Procedure and Texas Education Code § 21.355.

June 25, 2021

Page 4

IDEA will submit responsive documents shortly, and its written justification, as required by Government Code § 552.301. Thank you for your attention to this matter.

Cordially,

**SCHULMAN, LOPEZ,  
HOFFER & ADELSTEIN, LLP**



Joseph E. Hoffer

Enclosures

cc: Mr. Gregg Wendorf

Email: [REDACTED]



Schulman,  
Lopez, Hoffer  
& Adelstein, LLP

845 PROTON RD  
SAN ANTONIO, TEXAS 78258  
TELEPHONE: (210) 538-5385 FACSIMILE: (210) 538-5384  
WWW.SLH-LAW.COM & WWW.K12LAW.COM

JOSEPH E. HOFFER  
[REDACTED]

*ATTORNEYS AND COUNSELORS FOR TEXAS PUBLIC SCHOOLS AND LOCAL GOVERNMENT*

July 2, 2021

**Certified Mail, Return Receipt**  
**Requested No. 7019 1640 0001 1656 4379**

The Honorable Ken Paxton  
Attorney General, State of Texas  
**ATTN: Open Records Section**  
P.O. Box 12548  
Austin, Texas 78711-2548

**RE: Open Record Request by Gregg Wendorf**

Hon. General Paxton:

On behalf of our client, IDEA Public Schools (“IDEA”), we hereby request your opinion pursuant to the Texas Public Information Act (“TPIA” or the “Act”), Chapter 552 of the Texas Government Code, regarding the disclosure of certain information requested by Gregg Wendorf. By redacted copy of this letter, we are advising Mr. Wendorf of IDEA’s position with respect to this matter.

IDEA received Mr. Wendorf’s request on September 8, 2020. A copy of the request is included as Exhibit 1 to this letter. IDEA submitted a ten-day letter to your office on June 25, 2021. A copy of that letter is included as Exhibit 2 to this letter. The timeline for submitting this fifteen-day letter is as follows:

September 8, 2020

Request Received

**July 6, 2020 – June 13, 2021**

**IDEA’s headquarters and central office closed for general business and operating with limited skeleton crew basis due to COVID-19 health concerns and in response to emergency health orders issued by Hidalgo County health authorities; not included in timeline for responding to request<sup>1</sup>**

<sup>1</sup> Please note that IDEA’s headquarters has been operating on a skeleton crew basis since July 6, 2020, meaning that IDEA was generally unable to access records or process public information requests. We also recognize guidance from the Attorney General stating that the following days do not count as “business days” for purposes of calculating

*Schulman, Lopez, Hoffer & Adelstein, LLP—Trusted advisers and advocates for Texas independent school districts, charter schools and local governments offering accessible, responsive legal representation to our clients.*



<b>February 15–19, 2021</b>	<b>IDEA’s headquarters and central office was also separately closed for business due to Winter Storm Uri; not included in timeline for responding to request</b>
<b>February 22 – June 13, 2021</b>	<b>IDEA’s headquarters and central office remained closed for general business and operating with limited skeleton crew basis due to COVID-19 health concerns and in response to emergency health orders issued by Hidalgo County health authorities; not included in timeline for responding to request</b>
June 14, 2021	IDEA’s headquarters and central office reopen for business and come off of skeleton crew; business day one
June 15–18, 2021	Business days two through five
June 21–25, 2021	Business days six through ten
June 28–July 2, 2021	Business days eleven through fifteen; deadline for submitting this letter

In accordance with the Governor’s emergency declarations due to the COVID-19 pandemic and the Attorney General’s guidance regarding skeleton crew status, this submission is timely filed.

Mr. Wendorf is requesting the following information from IDEA:

- *Salary, bonus, life insurance, employee retirement payments paid by IDEA to Irma Munoz over the past five years.*
- *All IDEA Public Schools credit card statements for Irma Munoz and her assistant for the past five years.*
- *All payments made by IDEA Public Schools to Pro Direct over the last five years.*

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deadlines for responding to public information requests: (i) skeleton crew days are not business days; (ii) a day on which IDEA’s administrative offices are closed is not a business day; and (iii) closure days due to public health or epidemic response do not count as business days, even if staff continue to work remotely or if limited staff are on-site but involved directly in the public health or epidemic response. This guidance from the Attorney General is found online at <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/catastrophe-notice/update-calculation-business-days-and-covid-19>, and is also included in printed form as Attachment 2 to the ten-day letter previously submitted to your office.

- *Charter or private air travel records for Irma Munoz while working at IDEA over the past five years. Any flight manifests, passenger manifests, calendar notations for private air travel by Irma Munoz along with stated purpose of trip. Any logs where husband of Irma Chapa, Oscar Munoz, or children were on the flights.*
- *From 2016 to present: Any travel logs kept by transportation department or individual drivers regarding travel of Irma Munoz or family members of Irma Munoz.*
- *From 2016 to present: Any and all concerts that Irma Munoz attended at AT&T Center along with names of all guests she invited and whether or not they are employees of IDEA. If not, the nature of the relationship of guests and Irma Munoz.<sup>2</sup>*
- *Documents indicating the company that publishes the Impact Magazine and quotes or bid documents showing how that company was selected.<sup>3</sup>*
- *All documentation on the bid process for Pro-Direct that shows what their bid was, what their proposal was, and any other submitted proposals.*
- *Any and all documentation that shows Irma Munoz received permission, in writing from the board or the CEO, to supply the uniforms for IDEA students.<sup>4</sup>*
- *Any and all documents regarding either a RFQ, an RFP, or a bid for said uniforms.<sup>5</sup>*
- *Any and all first-class airplane ticket receipts for Irma Munoz and/or those in her company while way [sic] on IDEA business.*

See Exhibit 1.

By way of background information, shortly after the start of calendar year 2020, IDEA was made aware of potential discrepancies in the manner in which IDEA's former Chief Financial Officer had been accounting for IDEA funds. Immediately after learning of these potential discrepancies, IDEA launched an independent audit of the financial transactions authorized by multiple chiefs and administrators working out of IDEA's headquarters in Weslaco, Texas. This included transactions involving, among others, Irma Munoz, IDEA's former Chief Operating Officer ("COO"). In conducting this internal review and audit, IDEA has engaged the services of

2  
3  
4  
5

a former federal prosecutor, a CPA Forensic Auditing firm, and a retired IRS Criminal Investigative Division Special Agent who now conducts financial investigations to assist with the audit. This team of auditors and investigators have been conducting a thorough multi-year review of IDEA's financial transactions and those of various chiefs and administrators. During the course of this investigation, Ms. Munoz was separated from employment with IDEA. DEA's investigation remains open and ongoing with respect to financial transactions involving certain chiefs and administrators.

Included with this letter are the following documents:<sup>6</sup>

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

IDEA hereby requests your decision regarding the application of the following public disclosure exceptions authorized by the TPIA to the records [REDACTED].

**1. Texas Government Code § 552.116 (audit working papers)**

Section 552.116 of the TPIA provides:

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<sup>6</sup> IDEA has identified voluminous records responsive to Mr. Wendorf's request. For this reason, IDEA is submitting a representative sample of a portion of the records for your review. *See* Tex. Gov't Code § 552.301(e)(1)(D) (allowing for submission of representative sample if a voluminous amount of information is requested). Additionally, IDEA has redacted credit card, debit card, charge card, and other bank account information from the records submitted to your office without the necessity of requesting a determination, as allowed by the TPIA. *See id.* § 552.136(b)-(c) (noting that a credit card, debit card, charge card, or access device number of an account operated by a governmental body is confidential, and may be redacted without the necessity of requesting an Attorney General determination").

<sup>7</sup> Pro Direct is a company in the Rio Grande Valley.

- (a) An audit, working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a *school district*, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.
- (b) In this section:
- (1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.
  - (2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:
    - (A) intra-agency and interagency communications; and
    - (B) drafts of the audit report or portions of those drafts.

Texas Gov’t Code §552.116(a)-(b) (emphasis added).<sup>8</sup>

In order to claim the audit working paper exception, IDEA must demonstrate that the working papers are from an audit authorized or required by an appropriate legal authority, and must identify that authority.

As noted above, IDEA has been conducting a thorough investigation of financial transactions authorized by various IDEA chiefs and administrators, including Ms. Munoz, and this investigation remains ongoing. Due to the nature of concerns identified during this investigation, IDEA has informed the Texas Education Agency (“TEA” or “Agency”) of the ongoing review and

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<sup>8</sup> The Texas Education Code provides that open-enrollment charter schools (such as IDEA) are treated as traditional school districts for all purposes related to the TPIA. *See* Tex. Educ. Code §12.1051(b) (“With respect to the operation of an open-enrollment charter school, any requirement in Chapter 551 or 552, Government Code, or another law that concerns open meetings or the availability of information, that applies to a school district, the board of trustees of a school district, or public school student applies to an open-enrollment charter school, the governing body of a charter holder, the governing body of an open-enrollment charter school, or students attending an open-enrollment charter school.”).

audit. The Agency has requested that IDEA provide copies of all exhibits and documentation considered by IDEA's auditors/investigators; [REDACTED]. The Agency has also stated that IDEA should assert the audit working paper exception on behalf of TEA by requesting an Attorney General opinion if IDEA receives record requests for information related to the ongoing audit. [REDACTED]. TEA is being made aware of Mr. Wendorf's request, and they remain free to submit additional arguments to the Attorney General should they deem necessary to do so. IDEA submits that [REDACTED] must be withheld under the audit working paper exception, as requested by the Agency.

Public funds and charitable donations received by IDEA are held in trust by IDEA for the benefit of its students. *See* Tex. Educ. Code § 12.107. Additionally, in using public funds, IDEA and its governing body and school officers are "held to the standard of care and fiduciary duties that a trustee owes a beneficiary under Texas law." 19 Tex. Admin. Code § 100.1043(a)(2). IDEA is also required to adhere to generally accepted accounting standards of fiscal management, which includes GAAP, GAAS, GAGAS, the Uniform Guidance (2 CFR 200, a/k/a EDGAR) and the COSO *Integrated Framework* and GAO Green Book (Standards for Internal Control in the Federal Government). *See* Tex. Educ. Code § 12.115(a)(1)(2). Under these laws and rules, IDEA is required to maintain a system of controls designed to mitigate and, when warranted, address possible misuse of public funds through audits and investigations. Further, any misapplication of public funds "is subject to the civil and criminal laws governing misuse or misapplication of Texas public funds." 19 Tex. Admin. Code § 100.1043(a)(1). IDEA therefore has an affirmative obligation to conduct periodic audits of its finances, such as the instant one, and to determine whether public funds have been properly managed.

The records [REDACTED] have been provided to IDEA's independent auditor and special counsel as part of ongoing investigation and audit and are therefore directly related to IDEA's continuing audit of financial transactions authorized by certain chiefs and administrators. These records should be withheld from disclosure under section 552.116 of the TPIA as audit working papers.

**2. Texas Government Code §552.108 (certain law enforcement, corrections, and prosecutorial information)**

Section 552.108 of the TPIA provides in relevant part:

(a) Information held by law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime...

Tex. Gov't Code § 552.108. IDEA further submits that documents and information requested by Mr. Wendorf [REDACTED] are excepted from disclosure under section 552.108 of the TPIA as law enforcement records that, if released, could interfere with the

detection, investigation, or prosecution of a crime. *See id.* IDEA has directed legal counsel report the matters under investigation to various law enforcement agencies. The Texas Rangers have expressed to IDEA's special counsel that IDEA should not release information related to the audit of financial transactions, as doing so could potentially interfere with a review by law enforcement officials. For this reason, IDEA submits that [REDACTED] should be withheld under section 552.108 of the Act.

**3. Texas Government Code § 552.103 (litigation or settlement negotiations involving the state or a political subdivision)**

IDEA submits that the documents submitted in Exhibits 3-8 should be excepted from disclosure under section 552.103 of the TPIA, which provides, in relevant part:

a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

TEX. GOV'T CODE § 552.103(a), (c). In order to be entitled to claim this exception, IDEA must demonstrate that (1) civil or criminal litigation is pending or reasonably anticipated and (2) the requested information is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see also* Tex. Att'y Gen. ORD-0024 (2001); Tex. Att'y Gen. ORD-551 (1990).

The Attorney General has long held "litigation," for purposes of section 552.103, includes "contested cases" conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* Open Records Decision No. 588 (1991).

Here, Ms. Munoz has retained legal counsel who has filed a grievance related to her separation from IDEA; [REDACTED]. IDEA's personnel policies establish process for termination grievances; this process allows for a

July 2, 2021

Page 8 of 8

terminated employee to request a review of the separation decision by the Chief Human Assets Officer, who then issues a decision. If the terminated employee is dissatisfied, he or she may appeal through IDEA's general employee complaint and grievance process, which ultimately allows for an appeal to IDEA's Board of Directors. At that stage, a grievant may be represented by counsel and present evidence to the Board of Directors. [REDACTED]

[REDACTED] As Ms. Munoz has submitted a terminated employee grievance, "litigation" (as interpreted by the Attorney General) is currently pending. The information requested by Mr. Wendorf is directly related to that litigation and, for that reason, IDEA is entitled to withhold [REDACTED] under section 552.103 of the TPIA. *See* Open Records Letter Ruling OR2019-20194 (July 24, 2019) (allowing charter school to withhold records under section 552.103 due to employee's filing of grievance related to employment with school).

Thank you for your consideration in this matter. Please feel free to contact me should you have questions.

Cordially,

**SCHULMAN, LOPEZ,  
HOFFER & ADELSTEIN, LLP**



Joseph E. Hoffer

Enclosures

cc: Mr. Gregg Wendorf  
Email: [REDACTED] and [REDACTED]  
(Redacted copy of letter only)

# **Exhibit 9**

Progress Times





KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

August 31, 2021

Mr. Joseph E. Hoffer  
Counsel to Idea Public Schools  
Schulman, Lopez, Hoffer, & Adelstein, L.L.P.  
845 Proton Road  
San Antonio, Texas 78258

OR2021-23786

Dear Mr. Hoffer:

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# 902599.

IDEA Public Schools (the "IDEA"), which you represent, received a request for eleven points of information relating to a named individual, specified company, and financial information. You state IDEA does not possess some of the requested information.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.<sup>2</sup>

Initially, we note the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

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<sup>1</sup> The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (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).

<sup>2</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.

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information contains information in an account, contract, or voucher relating to the receipt or expenditure of funds by IDEA that is subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information at issue under sections 552.103, 552.108, and 552.116 of the Government Code. However, these are discretionary exceptions and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, IDEA may not withhold any portion subject to section 552.022(a)(3), which we marked, under sections 552.103, 552.108, and 552.116 of the Government Code.

Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

For purposes of section 552.103, “litigation” includes contested cases conducted in a quasi-judicial forum. Open Records Decision Nos. 588 at 2 (1991), 474 at 6 (1987) (disciplinary action before Texas State Board of Pharmacy), 368 at 2 (1983) (administrative hearing before Commissioner of Insurance), 301 at 1-2 (1982). Likewise, “contested cases” conducted under the Texas Administrative Procedure Act, chapter 2001 of the Government Code, constitute “litigation” for purposes of section 552.103. *See, e.g.*, ORDs 588 at 7 (State Board of Insurance proceeding), 301 at 2 (hearing before Public Utilities Commission). Factors this office considers in determining whether an administrative proceeding is conducted in a quasi-judicial forum include whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* ORD 588 at 3-4.

You state prior to IDEA’s receipt of the instant request, the named individual filed a grievance with IDEA. You indicate grievances filed with IDEA are “litigation” in that IDEA follows administrative procedures in handling such disputes. You further indicate IDEA’s grievance process is a multi-level hearing process wherein various administrators initially hear the grievance, and IDEA’s Board of Directors ultimately evaluates the grievance. You explain that during these hearings the grievant is allowed to be represented by counsel and present evidence to IDEA. Based upon these representations, we find you have demonstrated IDEA’s administrative procedures for grievances are conducted in a quasi-judicial forum, and thus, constitute litigation for purposes of section 552.103. Therefore, we agree litigation was pending when IDEA received the request. We also find you have established the information not subject to section 552.022 of the Government Code is related to the pending litigation for purposes of section 552.103(a). Accordingly, with the exception of the information we marked subject to section 552.022(a)(3) of the Government Code, IDEA may withhold the submitted information under section 552.103 of the Government Code.<sup>3</sup> The remaining information subject to section 552.022(a)(3) of the Government Code must be released.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,

Chase D. Young  
Attorney  
Open Records Division

CDY/jm

Ref: ID# 902599

Enc. Submitted documents

c: Requestor  
(w/o enclosures)



# **Exhibit 10**

Progress Times



**SOLTERO SAPIRE MURRELL PLLC**

7320 North MoPac Expressway, Suite 309

Austin, Texas 78731

T: 737-202-4873

F: 512-359-7996

www.ssmlawyers.com

**CARLOS SOLTERO**

Partner

M: [REDACTED]

June 15, 2021

Emily Boney

via e-mail

Dear Emily:

Appreciated meeting you briefly this morning at my client Irma Muñoz's grievance meeting by Teams. As discussed, attached is the preliminary Disparate Treatment Comparison chart—I modified it slightly to include the reference to Ms. Muñoz specifically in the top line—discussed at the grievance hearing. I would reiterate that if Idea has an explanation for the termination decision and wants to articulate its non-discriminatory reason for its decisions, we welcome that as well as any evidence that Idea contends supports the determination and the manner of handling the termination.

Also as discussed and requested, here is a written request for materials from Idea—pursuant to the Texas Public Information Act and as part of a dispute resolution of the employment dispute. We request the following information from you as attorney for Idea and from the representative and custodian of records for Idea:

1. A copy of Ms. Muñoz's appraisals or evaluations and all supporting documentation;
2. A copy of any and all documents, memoranda, and other written materials contained in her personnel file;
3. A copy of any contract of employment she may have had with Idea including any drafts of proposed contracts;
4. Any and all documents, memoranda, and other written materials reflecting and/or relating to concerns, complaints, or grievances *raised, brought, or filed against or about* Ms. Muñoz as an employee;



5. Any and all documents, memoranda, and other written materials reflecting and/or relating to concerns, complaints, or grievances *raised, brought, or filed by Ms. Muñoz;*
6. Any and all documents, memoranda, and other written materials reflecting and/or relating to responses or follow-up of the concerns, complaints and/or grievances described in Nos. 4 and 5 above; and,
7. Any and all documents, memoranda, or other written materials reflecting and/or relating to any investigations conducted by or on behalf of Idea concerning or involving Ms. Muñoz.

We look forward to a favorable and prompt response and an opportunity to review the information requested. Do not hesitate to contact me with any questions.

Sincerely,

Carlos R. Soltero /s/

cc: Irma Muñoz

# **Exhibit 11**

Progress Times





Schulman,  
Lopez, Hoffer  
& Adelstein, LLP

845 PROTON RD  
SAN ANTONIO, TEXAS 78258  
TELEPHONE: (210) 538-5385 FACSIMILE: (210) 538-5384  
WWW.SLH-LAW.COM & WWW.K12LAW.COM

JOSEPH E. HOFFER  
[REDACTED]

*ATTORNEYS AND COUNSELORS FOR TEXAS PUBLIC SCHOOLS AND LOCAL GOVERNMENT*

June 25, 2021

**Certified Mail Return Receipt**  
**Requested No. 7020 0640 0000 5342 8658**

The Honorable Ken Paxton  
Attorney General, State of Texas  
**ATTN: Open Records Section**  
P.O. Box 12548  
Austin, Texas 78711-2548

**RE: Open Record Request by Carlos Soltero (June 15, 2021)**

Hon. General Paxton:

My firm represents IDEA Public Schools (“IDEA”), an open-enrollment charter school system operating public charter school campuses throughout the state of Texas. On June 15, 2021, IDEA received a written Texas Public Information Act (“TPIA”) request from Carlos Soltero. A copy of Mr. Soltero’s request is included as Attachment 1 to this letter.

The timeline for IDEA’s submission of this letter to the Attorney General is as follows:

June 15, 2021	Request received
June 16–18, 2021	Business days one through three
June 21–25, 2021	Business days four through eight
June 28–29, 2021	Business days nine and ten; deadline for submission of this letter

IDEA has authorized my office to assist with this request. On its behalf, I hereby request a decision from your office regarding Mr. Soltero’s June 15, 2021 TPIA request. Some of the requested documents meet exceptions to disclosure listed in Chapter 552 of the Texas Government Code. The particular exceptions which may apply include one or more of the following: 552.101 (Confidential Information); 552.102 (Personnel Information/College Transcripts); 552.103 (Litigation or Settlement Exception); 552.104 (Information Related to Competition or Bidding); 552.105 (Information Related to Location or Price of Property); 552.106 (Certain

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**Exhibit 11 - Plaintiff’s Original Petition for Declaratory Judgment**

Legislative Documents); 552.107 (Certain Legal Matters); 552.108 (Certain Law Enforcement, Corrections, and Prosecutorial Records); 552.1081 (Certain Information Regarding Execution of Convict); 552.1085 (Sensitive Crime Scene Image); 552.109 (Private Communications of an Elected Office Holder); 552.110 (Trade Secrets and Certain Commercial Information or Financial Information); 552.1101 (Proprietary Information); 552.111 (Agency Memoranda); 552.112 (Certain Information Relating to Regulation of Financial Institutions or Securities); 552.113 Geological or Geophysical Information); 552.114 (Student Records); 552.115 (Birth and Death Records); 552.116 (Audit Working Papers); 552.117 (Certain Addresses, Telephone Numbers, Social Security Numbers and Personal Family Information); 552.1175 (Peace Officer Information); 552.1176 (Certain Information Maintained by the State Bar); 552.1177 (Certain Information Related to Humane Disposition of Animal); 552.118 (Official Prescription Program Information); 552.119 (Certain Photographs of Peace Officers); 552.120 (Certain Rare Books and Original Manuscripts); 552.121 (Certain Documents Held for Historical Research); 552.122 (Test Items); 552.123 (Name of Applicant for Chief Executive Officer of Institution of Higher Education); 552.1235 (Identity of Private Donor to Institution of Higher Education); 552.124 (Library or Library System Records); 552.125 (Certain Audits); 552.126 (Name of Applicant for Superintendent of Public School District); 552.127 (Personal Information Relating to Neighborhood Crime Watch Organization Participants); 552.128 (Potential Vendor or Contractor Information); 552.129 (Motor Vehicle Inspection Information); 552.130 (Certain Motor Vehicle Records); 552.131 (Certain Economic Development Information); 552.132 (Crime Victim or Claimant Information); 552.1325 (Crime Victim Impact Statement); 552.133 (Public Power Utility Competitive Matters); 552.134 (Certain Inmate Information); 552.135 (Information Held by a School District); 552.136 (Credit Card, Debit Card, Charge Card and Access Device Numbers); 552.137 (Email Addresses); 552.138 (Family Violence Center/Sexual Assault Program Information); 552.139 (Computer Security Information); 552.140 (Military Discharge Records); 552.141 (Marriage License Application Information); 552.142 (Records Subject to Order of Nondisclosure); 552.143 (Investment Information); 552.144 (Working Papers/Electronic Communications of State Office of Administrative Hearings Administrative Law Judges); 552.145 (Texas No-Call List); 552.146 (Certain Communications with Assistant or Employee of Legislative Budget Board); 552.147 (Social Security Numbers); 552.148 (Certain Personal Information Regarding Minors); 552.149 (Certain Comptroller or Appraisal District Records); 552.150 (Information That Might Compromise Safety of Employee or Officer of Hospital District); 552.151 (Information Regarding Select Agents); 552.152 (Information That Might Compromise Safety of Public Employee or Officer); 552.153 (Proprietary Records and Trade Secrets); 552.154 (Name of Applicant for Executive Director, Chief Investment Officer, or Chief Audit Executive of Teacher Retirement System of Texas); 552.155 (Certain Property Tax Appraisal Photographs); 552.156 (Continuity of Operations Plan); 552.158 (Personal Information Regarding Applicant for Appointment by Governor); 552.159 (Certain Work Schedules); 552.159 (Certain Personal Information Obtained by Flood Control District); 552.159 (Certain Information Provided by Out-of-State Health Care Provider); 552.160 (Personal Information of Applicant for Disaster Recovery Funds); 552.022 (Categories of Public Information) including but not limited to section 522.022(a)(16); 552.024 (Address and Telephone Number); 552.026 (Education Records); 552.027 (Information Available Commercially); 552.305 (Third Party Privacy and Property Interests); Texas Evidence Code § 503; Rule 192.5 of the Texas Rules of Civil Procedure and Texas Education Code § 21.355.

IDEA will submit responsive documents shortly, and its written justification, as required by Government Code § 552.301. Thank you for your attention to this matter.

Cordially,

**SCHULMAN, LOPEZ,  
HOFFER & ADELSTEIN, LLP**



Joseph E. Hoffer

Enclosures:

cc. Mr. Carlos Soltero  
Email: [REDACTED]



Schulman,  
Lopez, Hoffer  
& Adelstein, LLP

845 PROTON RD  
SAN ANTONIO, TEXAS 78258  
TELEPHONE: (210) 538-5385 FACSIMILE: (210) 538-5384  
WWW.SLH-LAW.COM & WWW.K12LAW.COM

JOSEPH E. HOFFER  
[REDACTED]

ATTORNEYS AND COUNSELORS FOR TEXAS PUBLIC SCHOOLS AND LOCAL GOVERNMENT

July 6, 2021

**Certified Mail Return Receipt**  
**Requested No. 7019 1640 0001 1656 4454**

The Honorable Ken Paxton  
Attorney General, State of Texas  
**ATTN: Open Records Section**  
P.O. Box 12548  
Austin, Texas 78711-2548

**RE: Open Record Request by Carlos Soltero (June 15, 2021)**

Hon. General Paxton:

On behalf of our client, IDEA Public Schools (“IDEA”), we hereby request your opinion pursuant to the Texas Public Information Act (“TPIA” or the “Act”), Chapter 552 of the Texas Government Code, regarding the disclosure of certain information requested by Carlos Soltero, an attorney representing Irma Munoz, IDEA’s former Chief Operating Officer (“COO”). By redacted copy of this letter, we are advising Mr. Soltero of IDEA’s position to this matter.

IDEA received Mr. Soltero’s request on June 15, 2021. Mr. Soltero is seeking the following information from IDEA:

*“...We request the following information from you as attorney for IDEA and from the representative custodian of records for IDEA:*

- 1. A copy of Ms. Munoz’s appraisals or evaluations and all supporting documentation;*
- 2. A copy of any and all documents, memoranda, and other written materials contained in her personnel file;*
- 3. A copy of any contract of employment she may have had with IDEA including any drafts of proposed contracts;*

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**Exhibit 11 - Plaintiff’s Original Petition for Declaratory Judgment**

4. *Any and all documents, memoranda, and other written materials reflecting and/or relating to concerns, complaints, or grievances raised, brought or filed against or about Ms. Munoz as an employee;*
5. *Any and all documents, memoranda, and other written materials reflecting and/or relating to concerns, complaints, or grievances raised, brought, or filed by Ms. Munoz;*
6. *Any and all documents, memoranda, and other written materials reflecting and/or relating to responses or follow-up of the concerns, complaints and/or grievances described in No. 4 and 5 above; and;*
7. *Any and all documents, memoranda, or other written materials reflecting and/or relating to any investigations conducted by or on behalf of IDEA concerning or involving Ms. Munoz.”*

See Exhibit 1.

IDEA submitted a ten-day letter to your office on June 25, 2021. A copy of that ten-day letter is included as Exhibit 2 to this letter. The timeline for IDEA’s submission of this letter to the Attorney General is as follows:

June 15, 2021	Request received
June 16–18, 2021	Business days one through three
June 21–25, 2021	Business days four through eight
June 28 – July 2, 2021	Business days nine through thirteen
<b>July 5, 2021</b>	<b>IDEA’s Headquarters are closed in observance for the Federal Holiday of Fourth of July/Independence Day; not included in deadline calculation</b>
July 6–7, 2021	Business days fourteen and fifteen; deadline for submission of this letter

This letter is timeline filed in accordance with the TPIA.

Included with this letter are the following records:

- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]

IDEA requests your decision regarding the application of the following public disclosure exceptions authorized by TPIA to the records included as Exhibits 3–6.

By way of background information, shortly after the start of calendar year 2020, IDEA was made aware of potential discrepancies in the manner in which IDEA’s former Chief Financial Officer had been accounting for public funds received by IDEA. Immediately after learning of these potential discrepancies, IDEA launched an independent audit of the financial transactions authorized by multiple chiefs and administrators working out of IDEA’s headquarters in Weslaco, Texas. This included transactions involving, among others, Irma Munoz. In conducting this internal review and audit, IDEA has engaged the services of a former federal prosecutor, a CPA Forensic Auditing firm, and a retired IRS Criminal Investigative Division Special Agent who now conducts financial investigations to assist with the audit. This team of auditors and investigators have been conducting a thorough multi-year review of IDEA’s financial transactions and those of various chiefs and administrators. During the course of this investigation, Ms. Munoz was separated from employment with IDEA on or about May 25, 2021.

**1. Texas Government Code § 552.116 (audit working papers)**

Section 552.116 of the TPIA provides:

- (a) An audit, working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a *school district*, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

- (1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an

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<sup>1</sup> IDEA has identified voluminous records potentially responsive to this portion of Mr. Soltero’s request. Due to the voluminous nature of these records, IDEA is submitting a representative sample of records for your review. *See* Tex. Gov’t Code § 552.301(e)(1)(D) (allowing for submission of representative sample if a voluminous amount of information is requested). Additionally, IDEA has redacted credit card, debit card, charge card, and other bank account information from the records submitted to your office without the necessity of requesting a determination, as allowed by the TPIA. *See id.* § 552.136(b)-(c) (noting that a credit card, debit card, charge card, or access device number of an account operated by a governmental body is confidential, and may be redacted without the necessity of requesting an Attorney General determination”).



order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

- (A) intra-agency and interagency communications; and
- (B) drafts of the audit report or portions of those drafts.

Texas Gov’t Code §552.116(a)-(b) (emphasis added).<sup>2</sup>

In order to claim the audit working paper exception, IDEA must demonstrate that the working papers are from an audit authorized or required by an appropriate legal authority, and must identify that authority.

As noted above, IDEA has been conducting a thorough investigation of financial transactions authorized by various IDEA chiefs and administrators, including Ms. Munoz, and this investigation remains ongoing. Due to the nature of concerns identified during this investigation, IDEA has informed the Texas Education Agency (“TEA” or “Agency”) of the ongoing review and audit. The Agency has requested that IDEA [REDACTED]

[REDACTED] The Agency has also stated that IDEA should assert the audit working paper exception on behalf of TEA by requesting an Attorney General opinion if IDEA receives record requests for information related to the ongoing audit. [REDACTED]

[REDACTED] TEA is being made aware of Mr. Soltero’s request, and they remain free to submit additional arguments to the Attorney General should they deem necessary to do so. [REDACTED]

[REDACTED] must be withheld under the audit working paper exception, as requested by the Agency.

Public funds and charitable donations received by IDEA are held in trust by IDEA for the benefit of its students. *See* Tex. Educ. Code § 12.107. Additionally, in using public funds, IDEA and its governing body and school officers are “held to the standard of care and fiduciary duties

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<sup>2</sup> The Texas Education Code provides that open-enrollment charter schools (such as IDEA) are treated as traditional school districts for all purposes related to the TPIA. *See* Tex. Educ. Code §12.1051(b) (“With respect to the operation of an open-enrollment charter school, any requirement in Chapter 551 or 552, Government Code, or another law that concerns open meetings or the availability of information, that applies to a school district, the board of trustees of a school district, or public school student applies to an open-enrollment charter school, the governing body of a charter holder, the governing body of an open-enrollment charter school, or students attending an open-enrollment charter school.”).

that a trustee owes a beneficiary under Texas law.” 19 Tex. Admin. Code § 100.1043(a)(2). IDEA is also required to adhere to generally accepted accounting standards of fiscal management, which includes GAAP, GAAS, GAGAS, the Uniform Guidance (2 CFR 200, a/k/a EDGAR) and the COSO *Integrated Framework* and GAO Green Book (Standards for Internal Control in the Federal Government). *See* Tex. Educ. Code § 12.115(a)(1)(2). Under these laws and rules, IDEA is required to maintain a system of controls designed to mitigate and, when warranted, address possible misuse of public funds through audits and investigations. Further, any misapplication of public funds “is subject to the civil and criminal laws governing misuse or misapplication of Texas public funds.” 19 Tex. Admin. Code § 100.1043(a)(1). IDEA therefore has an affirmative obligation to conduct periodic audits of its finances, such as the ongoing audit, and to determine whether public funds have been properly managed.

As noted above, IDEA received a report in early 2020 alleging possible mismanagement of school funds, which led to IDEA retaining special counsel to conduct a thorough financial audit of financial transactions authorized by several chiefs, including Ms. Munoz. This audit continues to this day. [REDACTED]

[REDACTED] should be withheld from disclosure under section 552.116 of the TPIA.

**2. Texas Government Code §552.108 (certain law enforcement, corrections, and prosecutorial information)**

Section 552.108 of the TPIA provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime...

IDEA further submits that [REDACTED] are excepted from disclosure under section 552.108 of the TPIA as law enforcement records that, if released, could interfere with the detection, investigation, or prosecution of a crime. *See id.* IDEA has directed legal counsel report the matters under investigation to various law enforcement agencies. The Texas Rangers have expressed to IDEA’s special counsel that IDEA should not release information related to the audit of financial transactions, as doing so could potentially interfere with a review by law enforcement officials. [REDACTED]

[REDACTED] should be withheld under section 552.108 of the Act.



**3. Texas Government Code § 552.103 (litigation or settlement negotiations involving the state or a political subdivision)**

IDEA submits that [REDACTED] should be excepted from disclosure under section 552.103 of the TPIA, which provides in relevant part:

a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Tex. Gov't Code § 552.103(a), (c). In order to be entitled to claim this exception, IDEA must demonstrate that (1) civil or criminal litigation is pending or reasonably anticipated and (2) the requested information is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see also* Tex. Att'y Gen. ORD-0024 (2001); Tex. Att'y Gen. ORD-551 (1990).

The Attorney General has long held "litigation," for purposes of section 552.103, includes "contested cases" conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* Open Records Decision No. 588 (1991).

Here, Ms. Munoz has filed a grievance related to her separation from employment. [REDACTED] IDEA's personnel policies establish process for termination grievances; this process allows for a terminated employee to request a review of the separation decision by the Chief Human Assets Officer, who then issues a decision. If the terminated employee is dissatisfied, he or she may appeal through IDEA's general employee complaint and grievance process, which ultimately allows for an appeal to IDEA's Board of Directors. At that stage, a grievant may be represented by counsel and present evidence to the Board of Directors. [REDACTED]

[REDACTED] As Ms. Munoz has submitted a terminated employee grievance, "litigation" (as interpreted by the Attorney General) is currently pending. Ms. Munoz's grievance was submitted

on June 8, 2021 and Mr. Soltero's record request was submitted on June 15, 2021; thus, litigation was pending at the time Mr. Soltero's request was received. The information requested by Mr. Soltero is directly related to her grievance and, for that reason, IDEA is entitled to withhold [REDACTED] under section 552.103 of the TPIA. *See* Open Records Letter Ruling OR2019-20194 (July 24, 2019) (allowing charter school to withhold records under section 552.103 due to employee's filing of grievance related to employment with school).

**4. Texas Government Code § 552.107 (certain legal matters) and Texas Rule of Evidence 503**

Section 552.107 of the Act provides that information is excepted from required public disclosure if "it is information that . . . an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct." TEX. GOV'T CODE § 552.107(a). The Attorney General has previously interpreted this section to protect the same information as protected under Texas Rule of Evidence 503, which discusses lawyer-client privileges. *See* Tex. Att'y Gen. ORD-676 (2002); *see also* TEX. R. EVID. 503 (recognizing client's "privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client"). If a governmental body demonstrates that Texas Rule of Evidence 503 applies to part of a communication, the entire communication generally will be protected. *See Hule v. DeShazo*, 992 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

To be entitled to this protection under Section 552.107 of the Act IDEA must demonstrate that: (1) the information constitutes or documents a communication; (2) the communication was made for the purpose of rendering professional legal services to IDEA; (3) the communication was between or among IDEA, its representatives, lawyers, and lawyer representatives; (4) the communication was confidential; and (5) the communication has remained confidential. *See* Tex. Att'y Gen. ORD-676 (2002).

[REDACTED]. As noted above, IDEA engaged the services of a former federal prosecutor, who currently is licensed to practice law in Texas, to serve as special counsel in conducting the audit. [REDACTED]

[REDACTED] constitutes a communication and was made to facilitate the rendition of professional legal services to IDEA. [REDACTED] meaning that the communication was between or among the special counsel and IDEA and its general counsel. [REDACTED] other than those to whom disclosure was made for the rendition of legal services. IDEA also has

July 6, 2021

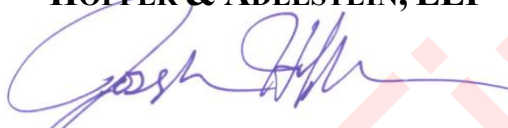
Page 8

not waived its attorney-client privilege with respect to the special counsel's report.<sup>3</sup> For these reasons, IDEA should be authorized to [REDACTED] under Texas Rule of Evidence 503, through section 552.107 of the TPIA.

Thank you for your attention to this matter. Please do not hesitate to contact me should you require additional information for review and rendering your determination.

Cordially,

**SCHULMAN, LOPEZ,  
HOFFER & ADELSTEIN, LLP**



Joseph E. Hoffer

Enclosures:

cc: Carlos Soltero  
Email: [REDACTED]  
(Redacted copy of letter only)

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<sup>3</sup> Again, IDEA is submitting a representative sample [REDACTED]. If the Attorney General requires additional portions of the report for review, please contact us so that we may facilitate such request. As noted in this letter, IDEA has maintained the privileged nature [REDACTED].

# **Exhibit 12**

Progress Times



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 1, 2021

Mr. Joseph E. Hoffer  
Counsel for IDEA Public Schools  
Schulman, Lopez, Hoffer & Adelstein, L.L.P.  
845 Proton Road  
San Antonio, Texas 78258

OR2021-23920

Dear Mr. Hoffer:

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# 902683.

IDEA Public Schools ("IDEA"), which you represent, received a request for seven categories of information pertaining to the requestor's client. You state you will redact access device numbers pursuant to section 552.136(c) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.108, and 552.116 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. In addition, you state you notified the Texas Education Agency (the "agency") of the request for information and of the right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the agency. We have considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.<sup>2</sup>

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, as follows:

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<sup>1</sup> Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

<sup>2</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 that those records contain substantially different types of information than that submitted to this office.

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(3) information in an account, voucher, or contract relating to the expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(1), (3). Some of the submitted information, which we marked, consists of a completed report and a performance evaluation subject to section 552.022(a)(1) of the Government Code. This information must be released pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). The information at issue also contains information in an account or contract relating to the expenditure of funds by a governmental body subject to section 552.022(a)(3) of the Government Code. The information subject to section 552.022(a)(3), which we marked, must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3). Although you seek to withhold the information subject to section 552.022 of the Government Code under sections 552.103 and 552.107 of the Government Code, these sections are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, IDEA may not withhold the information subject to section 552.022, which we marked, under sections 552.103 or 552.107 of the Government Code. However, as noted above, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will consider your argument under section 552.108 for this information. Further, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your assertion of the attorney-client privilege under rule 503 for the information at issue. In addition, we will consider the arguments for the information not subject to section 552.022 of the Government Code.

Texas Rule of Evidence 503(b)(1) provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;



(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show the communication is confidential by explaining it was not intended to be disclosed to third persons and it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding).

You assert the completed report subject to section 552.022(a)(1) consists of a confidential communication between outside legal counsel for IDEA and IDEA employees that was made for the purpose of facilitating the rendition of professional legal services to IDEA. You also assert the communication was intended to be, and has remained, confidential. Based upon your representations and our review, we find IDEA has demonstrated the applicability of the attorney-client privilege to the information at issue. *Cf. Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (attorney's entire investigative report protected by attorney-client privilege where attorney was retained to conduct investigation in her capacity as attorney for purposes of providing legal services and advice). Accordingly, IDEA may withhold the completed report subject to section 552.022(a)(1) of the Government Code, which we marked, under rule 503 of the Texas Rules of Evidence.<sup>3</sup>

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Section 552.116 of the Government Code provides the following:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov’t Code § 552.116. Although the agency claims the information at issue consists of “audit working papers prepared or maintained by [its] Division of Educator Investigations in conjunction with a pending investigation of alleged educator misconduct,” we note the information at issue was created by the district and exists independently of the agency’s audit working papers. Section 552.116 does not apply to records that exist independently of the audit working papers. *See id.* § 552.116(a) (if information in audit working paper is also maintained in another record, that other record is not excepted from public disclosure by section 552.116). In addition, we find IDEA has failed to demonstrate any of the information at issue constitutes audit working papers. Therefore, IDEA may not withhold any of the information at issue under section 552.116 of the Government Code.

Section 552.103 of the Government Code provides, in part:



(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date the requestor applies to the officer for public information for access to or duplication of the information.

*Id.* § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551.

For purposes of section 552.103, "litigation" includes contested cases conducted in a quasi-judicial forum. Open Records Decision Nos. 588 at 2 (1991), 474 at 6 (1987) (disciplinary action before Texas State Board of Pharmacy), 368 at 2 (1983) (administrative hearing before Commissioner of Insurance), 301 at 1-2 (1982). Likewise, "contested cases" conducted under the Texas Administrative Procedure Act, chapter 2001 of the Government Code, constitute "litigation" for purposes of section 552.103. *See, e.g.*, ORDs 588 at 7 (State Board of Insurance proceeding), 301 at 2 (hearing before Public Utilities Commission). Factors this office considers in determining whether an administrative proceeding is conducted in a quasi-judicial forum include whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* ORD 588 at 3-4.

You state prior to IDEA's receipt of the instant request, the requestor's client filed a grievance with IDEA. You explain this grievance remains unresolved. You indicate grievances filed with IDEA are "litigation" in that IDEA follows administrative procedures in handling such disputes. You further indicate IDEA's grievance process is a multi-level hearing process wherein various administrators initially hear the grievance, and IDEA's Board of Directors ultimately evaluates the grievance. You explain that during these hearings the grievant is allowed to be represented by counsel and present evidence to IDEA. Based upon these representations, we find you have demonstrated IDEA's administrative procedures for grievances are conducted in a quasi-judicial forum, and thus, constitute litigation for purposes of section 552.103. Therefore, we agree litigation was pending when IDEA received the request. We also find you have established the information not subject

to section 552.022 of the Government Code is related to the pending litigation for purposes of section 552.103(a). Accordingly, with the exception of the remaining information subject to section 552.022(a) of the Government Code, IDEA may withhold the submitted information under section 552.103 of the Government Code.<sup>4</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, IDEA may withhold the completed report subject to section 552.022(a)(1) of the Government Code, which we marked, under rule 503 of the Texas Rules of Evidence. With the exception of the remaining information subject to section 552.022(a) of the Government Code, IDEA may withhold the submitted information under section 552.103 of the Government Code. IDEA must release the remaining information.

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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/jxd

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Mr. Joseph E. Hoffer - Page 7

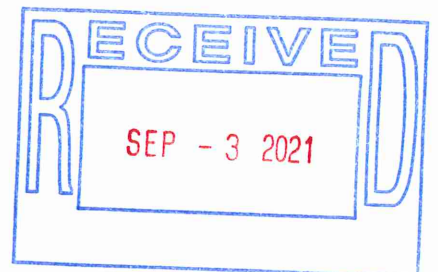
Ref: ID# 902683

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

Progress Times



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Mr. Joseph E. Hoffer  
Counsel for IDEA Public Schools  
Schulman, Lopez, Hoffer & Adelstein, L.L.P.  
845 Proton Road  
San Antonio, Texas 78258

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Amber Garza on behalf of Joseph Hoffer  
Bar No. 24049462

[REDACTED]

Envelope ID: 57207972

Status as of 9/18/2021 10:03 AM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Allen M.Keller		[REDACTED]	9/13/2021 7:29:08 PM	SENT
Amber Garza		[REDACTED]	9/13/2021 7:29:08 PM	SENT
Cynthia A.Pacheco		[REDACTED]	9/13/2021 7:29:08 PM	SENT
Jasmine E.Grant		[REDACTED]	9/13/2021 7:29:08 PM	SENT
Joseph E.Hoffer		[REDACTED]	9/13/2021 7:29:08 PM	SENT
Ricardo R.Lopez		[REDACTED]	9/13/2021 7:29:08 PM	SENT



## CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_ COURT (FOR CLERK USE ONLY): \_\_\_\_\_

**STYLED IDEA PUBLIC SCHOOLS v. KEN PAXTON, IN HIS OFFICIAL CAPACITY AS TEXAS ATTORNEY GENERAL**  
 (e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b>  Name: Joseph E. Hoffer Email: [Redacted]  Address: 845 Proton Road  City/State/Zip: San Antonio, TX  Signature: State Bar No: 24049462		<b>Names of parties in case:</b>  Plaintiff(s)/Petitioner(s): IDEA Public Schools  Defendant(s)/Respondent(s): Ken Paxton, in his official capacity as Texas Attorney General  [Attach additional page as necessary to list all parties]		<b>Person or entity completing sheet is:</b> <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____  Additional Parties in Child Support Case:  Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>					
<i>Civil</i>			<i>Family Law</i>		
<b>Contract</b>	<b>Injury or Damage</b>	<b>Real Property</b>	<b>Marriage Relationship</b>	<b>Post-judgment Actions (non-Title IV-D)</b>	
Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____  Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <i>Malpractice</i> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <i>Product Liability</i> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____  <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <i>Divorce</i> <input type="checkbox"/> With Children <input type="checkbox"/> No Children  <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciproals (UIFSA) <input type="checkbox"/> Support Order  <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Paternity/Parentage <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
<b>Employment</b>	<b>Other Civil</b>				
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input checked="" type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____			
<b>Tax</b>	<b>Probate &amp; Mental Health</b>				
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<i>Probate/Wills/Intestate Administration</i> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings		<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____		
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input checked="" type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover			
<b>4. Indicate damages sought (do not select if it is a family law case):</b>					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					



Schulman,  
Lopez, Hoffer  
& Adelstein, LLP

9/20/2021 3:05 PM

Velva L. Price  
District Clerk  
Travis County  
D-1-GN-21-005246  
Nancy Rodriguez

845 PROTON RD  
SAN ANTONIO, TEXAS 78258  
TELEPHONE: (210) 538-5385 FACSIMILE: (210) 538-5384  
WWW.SLH-LAW.COM & WWW.K12LAW.COM

JOSEPH E. HOFFER  
[REDACTED]

*ATTORNEYS AND COUNSELORS FOR TEXAS PUBLIC SCHOOLS AND LOCAL GOVERNMENT*

September 20, 2021

*Via E-File*

Velva L. Price  
Travis County District Clerk  
1000 Guadalupe  
Austin, TX 78701

**RE: IDEA Public Schools v. Ken Paxton, in his official capacity as Texas Attorney General Cause No. D-1-GN-21-005246 in 250<sup>th</sup> District Court, Travis County, Texas.**


Dear Ms. Price,

I am an attorney representing IDEA Public Schools in the case styled, IDEA Public Schools v. Ken Paxton, in his official capacity as Texas Attorney General, Cause No. D-1-GN-21-005246 in Travis County District Court. I am writing to respectfully request the issuance of a citation for the Defendant. I request that the completed citation be sent to my Paralegal, Amber Garza at the above referenced address or by email at [REDACTED]. Our office will serve the citation by private process.

Should you have any questions, please contact Amber Garza, a paralegal with my office at 210-[REDACTED].

Cordially,

**SCHULMAN, LOPEZ,  
HOFFER & ADELSTEIN, LLP**

  
Joseph E. Hoffer  
JEH:AG

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Amber Garza on behalf of Joseph Hoffer  
Bar No. 24049462

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Associated Case Party: IDEA Public Schools

Name	BarNumber	Email	TimestampSubmitted	Status
Ricardo R.Lopez			9/20/2021 3:05:08 PM	SENT
Allen M.Keller			9/20/2021 3:05:08 PM	SENT
Jasmine E.Grant			9/20/2021 3:05:08 PM	SENT
Joseph E.Hoffer			9/20/2021 3:05:08 PM	SENT
Amber Garza			9/20/2021 3:05:08 PM	SENT
Cynthia A.Pacheco			9/20/2021 3:05:08 PM	SENT