



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 26, 2016

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

OR2016-04647

Dear Mr. Meitler:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 599764 (TEA PIR# 25933).

The Texas Education Agency (the "agency") received a request for all correspondence to and/or from La Marque Independent School District (the "district") within the past six years. You state you will release some information. You state the agency has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/files/org/20060725usdoe.pdf>

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.116 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. You state some of the submitted information consists of audit working papers that were prepared or are maintained by the agency's Division of Financial Compliance in conjunction with pending audits of the district. You inform us these audits were conducted under the authority granted to the agency by sections 7.021(b)(1) and 7.028(a) of the Education Code. *See* Educ. Code §§ 7.021(b)(1) (agency shall administer and monitor compliance with education programs), .028(a) (agency may monitor program to ensure compliance with federal law and regulations, financial accountability, and data integrity). You state some of the remaining submitted information consists of audit working papers prepared or maintained by the agency's Division of Complaints, Investigations, and Enforcement. You inform us these audits were authorized by sections 39.051 and 39.052 of the Education Code. *Id.* § 39.051 (commissioner of education by rule shall determine criteria for accreditation statuses of accredited, accredited-warned, and accredited probation); *see also id.* §§ 39.052(a), (b)(1)-(2) (commissioner of education shall annually determine

accreditation status of school districts and shall assign accreditation status or revoke accreditation and order closure of district), .102 (setting forth actions to be taken by commissioner of education if district does not satisfy accreditation criteria under section 39.052). Lastly, you state the remaining submitted information consists of audit working papers prepared or maintained by the agency's Student Assessment Division Security Task Force in conducting investigations of testing irregularities in the administration of statewide assessment instruments. You inform us these audits are authorized by section 39.057(a)(8) of the Education Code, which permits the Commissioner of Education to authorize special accreditation investigations to be conducted in response to an allegation regarding or an analysis using a statistical method result indicating a possible violation of an assessment instrument security procedure. *See id.* § 39.057 (listing circumstances in which the commissioner shall authorize investigations). Upon review, we agree section 552.116 is applicable in this instance. Therefore, the agency may withhold the submitted information under section 552.116 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 599764

Enc. Submitted documents

c: Requestor
(w/o enclosures)