



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2016

Mr. Allen M. Keller
Counsel for the Compass Academy Charter School
Schulman, Lopez, Hoffer & Adelstein, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

OR2016-15317

Dear Mr. Keller:

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# 617444.

The Compass Academy Charter School (the "school"), which you represent, received a request for (1) the meeting agenda for the school's board of directors; (2) all documents pertaining to a specified investigation; (3) a recording between the requestor's client and a named individual; and (4) the personnel file of the requestor's client. We understand you have released all information responsive to the first and third categories of the request. You state the school has redacted 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 sections 552.116 and 552.135 of the Government Code. You also state you notified the Texas Education Agency (the "TEA") of the request for information and its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party

¹We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit a state educational agency or institution 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. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). The DOE has determined that FERPA determinations must be made by the educational institution from which the education records were obtained. A copy of the DOE's letter to this office may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

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 information.

Initially, we note you have not submitted any personnel information pertaining to the requestor's client. To the extent this information existed and was maintained by the school on the date it received the request for information, we presume the school has released it. If not, the school must do so at this time. *See id.* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

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. The TEA states the submitted information consists of audit working papers prepared or maintained by the TEA's Student Assessment Division Security Task

Force in conducting an investigation of testing irregularities in the administration of statewide assessment instruments. The TEA informs us the audit is 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* Educ. Code § 39.057 (listing circumstances in which the commissioner shall authorize investigations). Upon review, we agree section 552.116 is applicable in this instance. Therefore, on behalf of the TEA, the school may withhold the submitted information under section 552.116 of the Government Code.²

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/akg

Ref: ID# 617444

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.