



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 1, 2016

Ms. Kristi Godden
Counsel for Edinburg Consolidated Independent School District
O'Hanlon, McCollom & Demerath
808 West Avenue
Austin, Texas 78701-2208

OR2016-17231

Dear Ms. Godden:

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# 620733 (ORR# ECISD-16-065).

The Edinburg Consolidated Independent School District (the "district"), which you represent, received a request for all materials and investigative reports compiled or prepared by either the district or the Texas Education Agency ("TEA") regarding the basis for the requestor's client's demotion. The district states it has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ The district claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.² The district also states, and provides documentation showing, it notified

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

²We note, and the district acknowledges, the district did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Nonetheless, because section 552.101 of the Government Code and third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider the submitted arguments against release of the submitted information. *See id.* §§ 552.007, .302, .352.

TEA of the request and of its opportunity to submit comments to this office as to why the 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 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. TEA states the submitted information consists of audit working papers maintained by TEA's Student Assessment Division Security Task Force in conducting an investigation of testing irregularities in the administration of statewide assessment instruments. 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, the district may withhold the submitted information under section 552.116 of the Government Code on behalf of TEA.³

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# 620733

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

³As our ruling is dispositive, we need not address the remaining arguments against disclosure.