



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 19, 2017

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

OR2017-10957

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# 658439 (PIR# 29151, 29237).

The Texas Education Agency (the "agency") received two separate requests for information pertaining to complaints regarding specified schools in the Houston area during specified time periods.¹ You state the agency will release some information to one of the requestors. You state the agency will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² You state the

¹We note the agency sought and received clarification of the information requested from one requestor. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental 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 that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website:

agency redacted personal e-mail addresses subject to section 552.137 of the Government Code pursuant to the previous determination in Open Records Decision No. 684 (2009).³ 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.⁴

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 the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 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.

<https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>

³Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code).

⁴We assume that 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.

(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 prepared or maintained by the agency's Division of IDEA in conjunction with investigations in response to complaints under the federal Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400-1482. You further state the audits were authorized by sections 300.151 through 300.153 of title 34 of the Code of Federal Regulations, which require the agency to conduct audits of school districts as part of the state complaint procedures under IDEA. Additionally, you state the remaining submitted information consists of audit working papers prepared or maintained by the agency's Division of Governance and Investigations in conjunction with pending audits of the schools at issue. You inform us the audits are authorized by section 39.057(a)(14) of the Education Code, which permits special accreditation investigations to be conducted as the commissioner of education determines necessary. *See* Educ. Code § 39.057(a)(14). Based on these representations and our review, we agree the submitted information consists of audit working papers for purposes of section 552.116. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 658439

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)