



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2017

Ms. Leticia D. McGowan
Assistant General Counsel
Dallas Independent School District
9400 North Central Expressway, Suite 614
Dallas, Texas 75231

OR2017-23122

Dear Ms. McGowan:

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# 680241 (ORR# 16412).

The Dallas Independent School District (the "district") received a request for information pertaining to a specified investigation involving a named former employee, including a specified report. You claim the submitted information is excepted from disclosure under section 552.116 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, you state the district does not maintain documents responsive to portions of the request as specified by the requestor. Further, you state the district does not maintain any information responsive to the remainder of the request. The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); 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). However, a governmental body must make a good-faith effort to relate a request to

¹Although you also raise section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn your assertion of this exception. *See Gov't Code §§ 552.301, 552.302.*

information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). As you have submitted information for our review, we presume you have made a good faith effort to relate portions of the request to information the district maintains.

Next, we note the submitted information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-08295 (2015) and 2015-08940 (2015). In Open Records Letter No. 2015-08295, we concluded: (1) the district may withhold the information it marked under section 552.107(1) of the Government Code; (2) the district may withhold the information we marked under section 552.111 of the Government Code; (3) to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular service is not paid for by a governmental body, the district must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code; and (4) the district must release the remaining information. In Open Records Letter No. 2015-08940, we concluded: (1) to the extent the submitted information is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2015-08295, the district must rely on this prior ruling as a previous determination and withhold or release the identical information in accordance with that ruling; (2) the district may withhold the information subject to section 552.022 of the Government Code that it indicated as being subject to the attorney-client privilege pursuant to rule 503 of the Texas Rules of Evidence; (3) the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; (4) the district may withhold the remaining information it indicated as being subject to the attorney-client privilege under section 552.107(1) of the Government Code; (5) the district may withhold the information we marked under section 552.111 of the Government Code; (6) to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone services are not paid for by a governmental body, the district must withhold the cellular telephone numbers we marked under section 552.117(a)(1) of the Government Code; and (7) the district must release the remaining information. There is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the district may continue to rely on Open Records Letter Nos. 2015-08295 and 2015-08940 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, to the extent the submitted information is not identical to the information responsive to these previous rulings, we will address your argument against its disclosure.

Section 552.116 of the Government Code provides as follows:

(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.

(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 the submitted information consists of audit working papers that were prepared or maintained by the district's internal audit department concerning the conduct of the named former employee. You inform us the audit was authorized by the district's board of trustees pursuant to section 11.170 of the Education Code. *See* Educ. Code § 11.170 (district's board of trustees may select internal auditor who reports directly to board). Based on your representations and our review, we agree the submitted information consists of audit working papers for purposes of section 552.116. Therefore, the district 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 680241

Enc. Submitted documents

c: Requestor
(w/o enclosures)