



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 22, 2019

Ms. Rosa Miranda Smith  
Public Information Officer  
Irving Independent School District  
P.O. Box 152637  
Irving, Texas 75015-2637

OR2019-05112

Dear Ms. Smith:

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# 751404 (IISD File No. I000607-112718).

The Irving Independent School District (the "district") received a request for information pertaining to a named individual. We understand the district will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> We also understand you will redact information pursuant to section 552.136(c) of the Government Code.<sup>2</sup> Although the district takes no position as to whether the submitted information is excepted under the Act, you state release of the

---

<sup>1</sup>The 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. A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

<sup>2</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

submitted information may implicate the interests of the Texas Education Agency (“TEA”). Accordingly, you state, and provide documentation showing, the district notified TEA of the request for information and of 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 may submit comments stating why information should or should not be released). We have received comments from TEA. We have also received and considered comments submitted by the requestor. *See id.* We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor, in comments submitted to this office, contends the district did not comply with the requirements of section 552.301 of the Government Code regarding this request. *See id.* § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). We note the need of a governmental body, other than the one that received the request for information, to withhold information can provide a compelling reason to withhold information from disclosure. *See* Open Records Decision No. 586 (1991). Therefore, regardless of whether the district complied with section 552.301 in this instance, we will address TEA’s arguments.

The requestor also asserts the district has publicly disclosed information responsive to the present request. The Act does not permit the selective disclosure of information. *See* Gov’t Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov’t Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Whether the district previously released any of the information at issue is a question of fact. This office cannot resolve questions of fact through the open records ruling process but, instead, must rely on the representations of the governmental body seeking to withhold the information at issue. *See* Open Records Decision Nos. 554 (1990), 552 (1990). Therefore, we rely on the representations of the district and TEA in this matter. We also note this office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See*

ORD 516. Furthermore, release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinion Nos. H-917 at 1 (1976), H-242 (1974); *see also* Gov't Code §§ 552.007, .352. Accordingly, we will consider TEA's arguments against release of 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.

*Id.* § 552.116. TEA states the submitted information consists of audit working papers maintained by its Division of Governance and Investigations. TEA further states this pending audit is authorized by sections 21.031 and 21.041 of the Education Code. *See* Educ. Code §§ 21.031(a) (the agency shall regulate and oversee standards of conduct of public school educations), .041(b) (the agency shall propose rules providing for disciplinary proceedings); 19 T.A.C. § 249.14(a) (the agency may obtain and investigate information

concerning and educator's alleged improper conduct). Based on these representations and our review, we agree the submitted information consists of audit working papers for purposes of section 552.116. Accordingly, the district may withhold the submitted information under section 552.116 of the Government Code on behalf of TEA.<sup>3</sup>

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](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,



Blake Brennan  
Attorney  
Open Records Division

BB/eb

Ref: ID# 751404

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)

---

<sup>3</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.