



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 27, 2019

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

OR2019-08431

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# 764411 (TEA PIR# 37016).

The Texas Education Agency (the "agency") received a request for information pertaining to specified state testing. You claim a portion of the responsive information is subject to a previous ruling from this office. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.116, and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you state some of the responsive information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-09810 (2016). In that ruling, we determined the agency may withhold the submitted information under section 552.116 of the Government Code. You state there has not been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the agency may rely on Open Records Letter No. 2016-09810 as a previous

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

determination and withhold the identical information in accordance with that ruling. *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 that information is or is not excepted from 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, 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, 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 prepared or maintained by the agency's Division of Student Assessment. You inform us the audit is authorized by section 39.023(a-11) of the Education Code, which requires assessment instruments be determined valid and reliable by an independent party. *See* Educ. Code § 39.023(a-11) (before adoption, assessment instrument must be determined

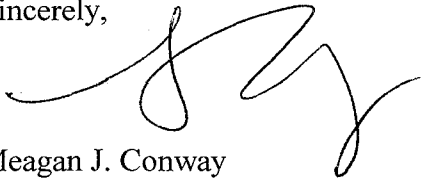
valid and reliable by entity independent of the agency). Based on your representations and our review, we agree the submitted information constitutes audit working papers. Therefore, the agency may withhold the submitted information under section 552.116 of the Government Code.²

In summary, the agency may rely on Open Records Letter No. 2016-09810 as a previous determination and withhold the identical information in accordance with that ruling. 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/jxd

Ref: ID# 764411

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.