



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 10, 2019

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

OR2019-09694

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# 756784 (TEA PIR# 36448).

The Texas Education Agency (the "agency") received a request for information pertaining to a specified investigation. 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.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's arguments. Section 39.058 of the Education Code states, in relevant part:

(a) The agency shall adopt written procedures for conducting special accreditation investigations . . . including procedures that allow the agency to obtain information from district employees in a manner that prevents a district or campus from screening the information. The agency shall make the procedures available on the agency Internet website. Agency staff must be trained in the procedures and must follow the procedures in conducting the special accreditation investigation."

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

Educ. Code § 39.058(a). Part III of the agency's procedures for special accreditation investigations states, in relevant part:

While on-site, . . . interviews may be conducted with school district or charter school staff, parents, students, and other persons with direct and/or relevant knowledge related to a [special accreditation investigation]

Interviews may be recorded electronically, with the consent of the interviewee. Any person being recorded may request a copy of the recording.

Texas Education Agency Special Investigations Unit, Investigation Procedures at 2 (Sept. 2016), <https://tea.texas.gov/WorkArea/DownloadAsset.aspx?id=25769822633>. Part V of the agency's procedures for special accreditation investigations states, in relevant part:

[The agency] complies with the [Act] regarding the release of information in response to a request for public information. Information can only be kept confidential to the extent allowed by law. If audit working papers and drafts relating to the investigation are requested by the public, [the agency] will seek to withhold them from release through the Office of the Attorney General.

Id. at 4. Although the requestor asserts part III of the agency's procedures for special accreditation investigations requires the agency to release the requested information, we note the agency states the requestor is not the authorized representative of the interviewees at issue and does not have a right of access, beyond the right of the general public, to the responsive interviews held by the agency. Whether the requestor is the authorized representative of the individuals at issue is a question of fact. This office can not resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Additionally, although the requestor asserts the instant request is not a request for public information and does not fall within the purview of the Act, we note a written communication that reasonably can be judged to be a request for public information is a request for information under the Act. Open Records Decision No. 44 at 2 (1974). A governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561 (1990). In this instance, the agency has submitted information it believes is responsive to the request and made arguments against disclosure of this information. Accordingly, we will consider the agency's argument against disclosure of the submitted information.

Section 552.116 of the Government Code provides,

(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 by laws 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.

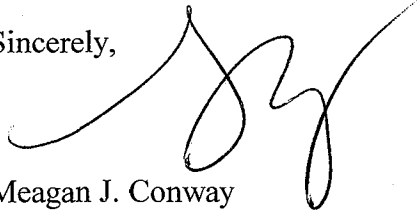
Gov't Code § 552.116. You state the submitted information consists of audit working papers relating to a special accreditation investigation that is maintained by the agency's Division of Governance and Investigations. You state this audit was authorized by section 39.057(a)(16) of the Education Code. Educ. Code § 39.057 (listing circumstances in which agency commissioner shall authorize investigations). Based on your representations and our review, we agree the submitted information consists of audit working papers for purposes of section 552.116. Accordingly, 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,

A handwritten signature in black ink, appearing to read 'Meagan J. Conway', written over a white background.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/gw

Ref: ID# 756784

Enc. Submitted documents

c: Requestor
(w/o enclosures)