



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2019

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

OR2019-10623

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# 760863 (Ref. No. I000647-112718).

The Irving Independent School District (the "district") received a request for personnel information pertaining to a named individual. Although the district takes no position as to whether the submitted information is excepted under the Act, you state release of the 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 must address the district's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to subsection 552.301(e), a governmental body must submit to this office within

fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The district received the present request for information on January 31, 2019. We understand the district was closed on February 18, 2019, in observance of President's Day. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Therefore, the district was required to provide the information required by section 552.301(e) by February 22, 2019. However, the district did not provide a copy or representative sample of the requested information as required by section 552.301(e) until April 8, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the district failed to comply with the procedural requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *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 (Tex. App.—Austin 1990, no writ). 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). TEA objects to the release of the information at issue under sections 552.103 and 552.116 of the Government Code. Thus, we will consider whether the district may withhold the submitted information on behalf of TEA.

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.

Gov’t Code § 552.116. TEA states the submitted information consists of “audit working papers prepared or maintained by [its] Division of Educator Investigation in conjunction with a pending investigation of alleged educator misconduct.” 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 educators), .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.¹

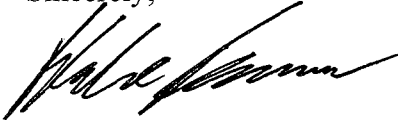
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

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 "Blake Brennan", written in a cursive style.

Blake Brennan
Attorney
Open Records Division

BB/eb

Ref: ID# 760863

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)