



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2019

Ms. Kristi Godden
Counsel for the La Joya Independent School District
O'Hanlon, Demerath & Castillo
808 West Avenue
Austin, Texas 78701

OR2019-20697

Dear Ms. Godden:

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# 777536 (ID# LJISD-19-025).

The La Joya Independent School District (the "district"), which you represent, received a request for information related to a specified employee. 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 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, you state, and submit documentation demonstrating, the city received the request for information on May 1, 2019. 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. Accordingly, the city's ten-business-day deadline was May 15, 2019. However, the envelope in which you submitted the information under section 552.301(b) bears a post meter mark of May 21, 2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Accordingly, we find the city failed to comply with the procedural requirements of section 552.301 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sean McCormick
Attorney
Open Records Division

SMC/eb

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

Ref: ID# 777536

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)