



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 5, 2019

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

OR2019-31098

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# 803047 (ORR# 39866).

The Texas Education Agency (the "TEA") received a request for information related to special education complaints during a specified time period.<sup>1</sup> The TEA states it is withholding student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>2</sup> The TEA states it will withhold some of the requested information in accordance with several previous determinations.<sup>3</sup> *See* Open Records Decision No. 673 (2001) (so long as law,

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<sup>1</sup> The TEA states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</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 student 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 education records. A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

<sup>3</sup> The previous determinations at issue are Open Records Letter Nos. 2019-22301 (2019), 2019-17161 (2019), 2019-16287 (2019), 2019-05514 (2019), 2018-13025 (2018), 2018-13736 (2018), 2018-11584 (2018), 2018-07292 (2018), 2017-11181 (2017), 2017-14382 (2017), 2017-12014 (2017), 2017-01794 (2017), 2016-21625 (2016), 2016-17991 (2016), and 2015-23929 (2015).

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). The TEA claims the submitted information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception the TEA claims and reviewed the submitted representative sample of information.<sup>4</sup>

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 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.

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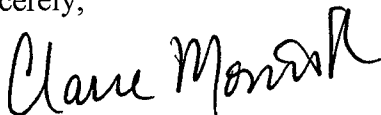
<sup>4</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.116. The TEA states some of the submitted information consists of audit working papers prepared or maintained by the TEA's Division of Dispute Resolution and Strategic Supports Monitoring in conjunction with investigations in response to complaints under the federal Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400-1482. The TEA informs us the audits at issue are authorized by sections 300.151 through 300.153 of title 34 of the Code of Federal Regulations, which require the TEA to conduct audits of school districts as part of the state complaint procedures under IDEA. *See* 34 C.F.R. §§ 300.151-300.153. Additionally, the TEA states some of the submitted information consists of audit working papers prepared or maintained by the TEA's Division of Governance and Investigations. The TEA informs these audits are authorized by section 39.057(a)(16) of the Education Code. *See* Educ. Code § 39.057(a)(16). Based on these representations and our review, we agree the information at issue consists of audit working papers for purposes of section 552.116. Therefore, the TEA may withhold the submitted information under section 552.116 of the Government Code.

The TEA also asks this office to issue a previous determination that would permit it to withhold information under section 552.116 of the Government Code without requesting a ruling from this office. Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/mo

Ref: ID# 803047

Enc. Submitted documents

c: Requestor  
(w/o enclosures)