



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 6, 2019

Ms. Elizabeth G. Neally
Counsel for the Natalia Independent School District
Walsh, Gallegos, Trevino, Russo & Kyle, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2019-34472

Dear Ms. Neally:

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# 803883.

The Natalia Independent School District (the "district"), which you represent, received a request for information pertaining to specified allegations that led to the requestor's termination. The district claims the submitted information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception the district claims and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information includes a completed investigation that is subject to section 552.022(a)(1). The district must release the completed investigation pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* The district seeks to withhold the information subject to section 552.022(a)(1) under section 552.116 of the Government Code. However, section 552.116 is discretionary in nature and does not make information confidential under the Act. *See Open Records*

Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the district may not withhold the information subject to section 552.022, which we marked, under section 552.116 of the Government Code. However, we will consider the applicability of section 552.116 to the remaining information. Further, because section 552.117 of the Government Code makes information confidential under the Act, we will consider the applicability of this section to the information subject to section 552.022(a)(1).¹

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.

Gov't Code § 552.116. The district asserts the remaining information consists of audit working papers maintained in the course of an investigation into alleged inappropriate

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

conduct authorized by district board policy FFI (Local) and FFH (Local). Based on the district's representations and our review of the information at issue, we agree the information at issue constitutes audit working papers maintained in the course of an investigation. Accordingly, the district may withhold the remaining information under section 552.116 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). *See id.* §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, "A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number." *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue did not timely request confidentiality under section 552.024, the district may not withhold the information we marked under section 552.117(a)(1).

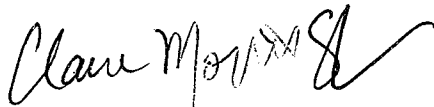
In summary, with the exception of the marked information subject to section 552.022(a)(1) of the Government Code, the district may withhold the submitted information under section 552.116 of the Government Code. The district must release the marked information pursuant to section 552.022(a)(1) of the Government Code; however, if the individual whose information we marked timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we marked under section 552.117(a)(1) 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 <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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan", with a stylized flourish at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 803883

Enc. Submitted documents

c: Requestor
(w/o enclosures)