



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2020

Ms. Sarah Flourney
Counsel for the Grapevine-Colleyville Independent School District
Brackett & Ellis, P.C.
100 Main Street
Fort Worth, Texas 76102-3090

OR2020-12673

Dear Ms. Flourney:

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# 825061 (Ref. No. P000092-021420).

The Grapevine-Colleyville Independent School District (the "district"), which you represent, received a request for all information pertaining to the investigation of a named employee during a certain time period. You state the district has redacted certain information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You also state the district has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you notified the Texas Education Agency (the "agency") of the request. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have received comments from the agency. We have considered the submitted arguments and reviewed the submitted information.

Section 552.116 of the Government Code provides the following:

¹ 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 an adult student's 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 educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

(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.

Id. § 552.116. The agency states the information at issue consists of “audit working papers prepared or maintained by [its] Division of Educator Investigations in conjunction with a pending investigation of alleged educator misconduct.” The agency 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 educations), .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 upon these representations and our review, we agree the information at issue 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 the agency.²

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/jxd

Ref: ID# 825061

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)