



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 30, 2022

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

OR2022-09272

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# 936505 [PIR# 51434].

The Texas Education Agency received a request for specified complaints and related information submitted to the agency during a specified period of time. The agency 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.¹ The agency states it will release some information to the requestor. The agency claims the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

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 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/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>

² 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.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 39.004 of the Education Code which provides, in part:

(e) Unless otherwise provided by law, all evidence collected by the agency in connection with a special investigation, including witness statements and videos of agency interviews, are confidential and not subject to disclosure under Chapter 552, Government Code, except that evidence described by this section may be disclosed:

(1) to a person with a legitimate interest in the investigation; or

(2) in connection with an administrative or other legal proceeding brought under this title.

Educ. Code § 39.004(e). The agency states the information at issue was collected and prepared by the agency’s Division of Compliance and Inquiries in conjunction with a pending special investigation. The agency also states the special investigation was authorized by section 39.003(a)(17) of the Education Code. *See id.* § 39.003 (listing circumstances in which the commissioner shall authorize investigations). Based on these representations and our review, we agree the information at issue constitutes evidence collected by the agency in connection with a special investigation. Accordingly, the agency must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 39.004(e) of the Education Code.

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 the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 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 agency asserts the information at issue consists of audit working papers prepared or maintained by agency’s Division of Monitoring, Review, and Support in conjunction with an investigation of complaints under the federal Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400-1482, and informs us the audit at issue is 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. Based on these representations and our review, we agree the information at issue constitutes audit working papers. Therefore, the agency may withhold the remaining information under section 552.116 of the Government Code.

In summary, the agency must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 39.004(e) of the Education Code. The agency may withhold the remaining information under section 552.116 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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/jxd

Ref: ID# 936505

c: Requestor