



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 21, 2022

Ms. Katheryne Ellison  
Assistant General Counsel  
Houston Independent School District  
4400 West 18th Street  
Houston, Texas 77092-8501

OR2022-29147

Dear Ms. Ellison:

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# 973468 (ORR# HC062922).

The Houston Independent School District (the "district") received a request for all written notices of investigation received by the district from the Texas Education Agency ("TEA") for a stated timeframe. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by TEA. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the requested information was the subject of a previous ruling from this office. In Open Records Letter No. 2022-16019 (2022), this office ruled the district must withhold the information that TEA has indicated under section 552.101 of the Government Code in conjunction with section 39.004(e) of the Education Code on behalf

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<sup>1</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 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>.

of TEA, and the district may withhold the remaining information under section 552.116 of the Government Code on behalf of TEA. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the district must continue to rely on Open Records Letter No. 2022-16019 as a previous determination and withhold the previously ruled upon information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the submitted arguments.

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(e) of the Education Code which provides as follows:

(e) Unless otherwise provided by law, all evidence collected by [TEA] in connection with a special investigation, including witness statements and videos of agency interviews, are confidential and not subject to disclosure under [the Act], 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). TEA states some of the submitted information was collected and prepared by its Division of Investigations in conjunction with pending special investigations. TEA also states the special investigations 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, we find the information at issue constitutes evidence collected by TEA in connection with a special investigation. Accordingly, the district must withhold the information that TEA has indicated under section 552.101 of the Government Code in conjunction with section 39.004(e) of the Education Code on behalf of TEA.<sup>2</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

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<sup>2</sup> As our ruling is dispositive, we do not address the other arguments of the district to withhold this information.

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 asserts the remaining information consists of audit working papers prepared or maintained by its Division of Investigations. TEA states the audits were authorized by section 39.057(a) of the Education Code. *See* Educ. Code § 39.057 (listing circumstances in which TEA commissioner shall authorize investigations). Based on these representations, we agree the information at issue constitutes audit working papers. Accordingly, the district may withhold the remaining information under section 552.116 of the Government Code on behalf of TEA.<sup>3</sup>

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the district must continue to rely on Open Records Letter No. 2022-16019 as a previous determination and withhold the previously ruled upon information in accordance with it. The district must withhold the information that TEA has indicated under section 552.101 of the Government Code in conjunction with section 39.004(e) of the Education Code on behalf of TEA. The district may withhold the remaining information under section 552.116 of the Government Code on behalf of TEA.

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<sup>3</sup> As our ruling is dispositive, we need not address the other argument of the district to withhold this 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,

Sarah E. Reese  
Attorney  
Open Records Division

SER/mo

Ref: ID# 973468

c: Requestor