



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 6, 2022

Mr. Montgomery Meitler  
Deputy General Counsel for Public Information  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2022-30793

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# 976703 (TEA PIR# 54675).

The Texas Education Agency (the "agency") received a request for specified documentation related to a specified program. You state you will release some information to the requestor. You state you will redact e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion that information similar to the information at issue has previously been released by the agency. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at

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<sup>1</sup> Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</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 that those records contain substantially different types of information than that submitted to this office.

1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, we note section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. Upon review, we have no indication the information at issue has been previously released in its exact form to any members of the public. Therefore, we find section 552.007 is inapplicable to the information at issue and we will consider your argument against its disclosure.

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. You state the submitted information consists of audit working papers maintained by the agency's Division of Educator Standards, Testing, and

Preparation. You inform us the audit was authorized by section 21.0455 of the Education Code and section 228.70 of title 19 of the Texas Administrative Code. *See* Educ. Code § 21.0455 (State Board for Educator Certification shall establish process for candidate for teacher certification to direct complaint against educator preparation program to agency); 19 T.A.C. § 228.70 (agency shall maintain a process through which candidate or former candidate in educator preparation program may submit a complaint about an educator preparation program for investigation and resolution). Based on your representations and our review, we agree the information at issue consists of audit working papers for purposes of section 552.116. Accordingly, the agency may withhold the submitted 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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/eb

Ref: ID# 976703

Enc. Submitted documents

c: Requestor  
(w/o enclosures)