



August 6, 2002

Mr. David Anderson  
General Counsel  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2002-4329

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166735.

The Texas Education Agency (the "agency") received a request for correspondence related to the April 2002 TAAS administration at Blackshear School. You claim that the submitted document is excepted from disclosure under section 552.116 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the document at issue.

Section 552.116 of the Government Code provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from [public disclosure]. If the information in an audit working paper is also maintained in another records, 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 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:

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<sup>1</sup>We note that on June 6, 2002, the agency withdrew its claims under sections 552.101, 552.103, 552.108 of the Government Code.

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116.

A governmental body that invokes section 552.116 must explain that the audit working papers are from an audit “authorized or required by a statute of this state or the United States.” Gov't Code § 552.116(b)(1). You explain that the agency is currently conducting an investigation into allegations of improprieties in the TAAS administration. You further explain that the agency's investigation is authorized under Chapter 39 of the Texas Education Code and the State Board of Education rules. We note, however, that for purposes of section 552.116, an “investigation” is defined as “an inquiry into specified acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt, or use of *state funds*, or into specified *financial* transactions or practices that may involve such impropriety, malfeasance, or nonfeasance (emphasis added). Gov't Code § 321.0136; *see* Gov't Code § 2102.003 (defining term “audit” for purposes of Texas Internal Auditing Act, which governs state agency audits, to include investigation described by Gov't Code § 321.0136). After reviewing your arguments, the cited statutes, and the submitted information, we conclude that the agency is not conducting an investigation as defined by section 321.0136. Accordingly, the agency may not withhold the submitted document under section 552.116.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

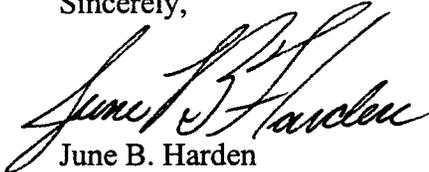
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/GTS/sdk

Ref: ID# 166735

Enc: Submitted documents

c: Michelle Martinez  
Austin Schools Reporter  
Austin American-Statesman  
305 South Congress Avenue  
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(w/o enclosures)