



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2007

Ms. Karen Hattaway
Senior Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2007-00566

Dear Ms. Hattaway:

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# 269444.

The Texas Education Agency (the "agency") received two requests for information relating to schools that appealed their accountability ratings. You claim that the requested information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹ We also received comments from one of the requestors.²

We first note that the United States Department of Education Family Compliance Office recently informed this office that the Family Education Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local education authorities to disclose to this office, without parental consent, unredacted, personally

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the agency to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.³ Consequently, state and local education authorities that receive a request for education records under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You have submitted, among other things, redacted education records for our review. You state that the agency will withhold the redacted information, which consists of personally identifiable information, pursuant to FERPA. Accordingly, we will address your claimed exception to public disclosure of the submitted information.

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, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, or a joint board operating under Section 22.074, Transportation Code, 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, 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 that the submitted information consists of audit working papers that are maintained by the agency in connection with an audit conducted under the authority granted by section 39.072(c) of the Education Code. *See* Educ. Code § 39.072(c) (agency shall evaluate against state standards and report the performance of each campus in

³A copy of this letter may be found at http://www.oag.state.tx.us/opinopen/og_resources.shtml.

a district and each open-enrollment charter school on the basis of the indicators adopted under Educ. Code §§ 39.051(b)(1)-(8)). Based on your representations and our review of the information at issue, we conclude that the submitted information constitutes audit working papers that the agency may withhold under section 552.116 of the Government Code.

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).

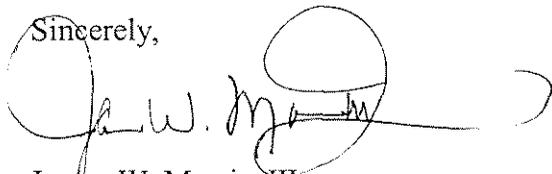
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large, prominent initial "J" and a long, sweeping underline.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jww

Ref: ID# 269444

Enc: Submitted documents

c: Mr. John Dodd
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(w/o enclosures)

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