



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2009

Mr. Scott A. Kelly  
Deputy General Counsel  
The Texas A&M University System  
A&M System Building, Suite 2079  
200 Technology Way  
College Station, Texas 77845-3424

OR2009-02397

Dear Mr. Kelly:

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# 335641.

The Texas A&M University System (the "system") received a request for the following information: (1) all documents generated between November 15, 2007 and May 1, 2008 as a result of a specified audit; and (2) all documents generated between February 1, 2008 and May 1, 2008 as a result of a specified letter. You state that the system has released a final copy of the audit report at issue to the requestor. You also state that the system is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>1</sup> You claim that the submitted information is excepted from disclosure

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<sup>1</sup>The United States Department of Education Family Compliance Office has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purposes of review in the open records ruling process under the Act. Because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted information. Such determinations under FERPA must be made by the educational authority in possession of the education record.

under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted any information responsive to the request for all documents generated between February 1, 2008 and May 1, 2008 as a result of a specified letter. Therefore, to the extent this information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

We also note that the submitted information contains documents filed with the court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under other law. *See Gov't Code § 552.022(a)(17).* Although you raise section 552.116 for this information, section 552.116 is a discretionary exception that protects the governmental body's interests and may be waived. *See id. § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions).* Thus, it is not other law that makes information confidential for the purposes of section 552.022. Accordingly, the system may not withhold the court-filed documents, which we have marked, under section 552.116. As you raise no further exceptions to disclosure of these documents, they must be released to the requestor.

We now address your argument under section 552.116 of the Government Code for the remaining information. Section 552.116 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, 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, 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 that the submitted documents are audit working papers that were prepared and maintained by system auditors in the course of conducting the audit and preparing the specified audit report. You also explain that this audit was authorized by the Internal Auditing Act, chapter 2102 of the Texas Government Code. *See id.* § 2102.005 (requiring state agencies to conduct internal audit programs); *see also id.* § 2102.003 (defining types of audits). Based on your representations and our review, we agree that the system may withhold the remaining information pursuant to 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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/jb

Ref: ID# 335641

Enc. Submitted documents

c: Requestor  
(w/o enclosures)