



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2009

Mr. W. Montgomery Meitler
Assistant Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2009-07899

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# 345834 (TEA PIR#: 11016).

The Texas Education Agency (the "agency") received a request for information pertaining to a specified complaint. You state the agency is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a).¹ You claim that 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.²

Section 552.116 of the Government Code provides as follows:

¹The Department of Education has informed this office that it is the responsibility of the educational agency or institution to make determinations under FERPA. A copy of the Department of Education's letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²We assume that 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.

(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, 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 information at issue consists of audit working papers prepared or maintained by the agency's Student Assessment Division Security Task Force "in conducting investigations of testing irregularities in the administration of statewide assessment instruments." You inform us that section 39.075(a)(8) of the Education Code authorizes the Commissioner of Education to permit a special accreditation investigation in response to an alleged violation of an assessment instrument security procedure. *See* Educ. Code § 39.075(a) (listing instances in which the commissioner "shall" authorize investigations). Based on your representations and our review, we agree that the requested information constitutes audit working papers that the agency may withhold 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, 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 345834

Enc. Submitted documents

cc: Requestor
(w/o enclosures)