



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 5, 2009

Ms. Ylise Janssen  
Senior School Law Attorney  
Austin Independent School District  
1111 West Sixth Street  
Austin, Texas 78703-5338

OR2009-13935

Dear Ms. Janssen:

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# 357550.

The Austin Independent School District (the "district") received a request for seven categories of information relating to allegations involving named district employees and the requestor's daughter's performance on a specified TAKS Test administration. You claim that the submitted information is excepted from disclosure under section 552.116 of the Government Code.<sup>1</sup> You also state, and provide documentation showing, that the district notified the Texas Education Agency (the "agency") of the request and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the agency. We have considered the submitted arguments and reviewed the submitted 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, a school district,

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<sup>1</sup> Although you also raise section 552.101 of the Government Code, you do not present any arguments against disclosure under that section. We note this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2000), 575 at 2 (1990).

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.

*Id.* § 552.116. You contend that the submitted information constitutes audit working papers prepared or maintained as part of an investigation by the auditor. We note, however, that section 552.116 is intended to protect the auditor's interests. In this instance, the audit was conducted by the agency. As the auditee, the district cannot assert section 552.116 in order to protect its own interest in withholding the information. However, the agency also asserts section 552.116 for the submitted information. The agency states 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." The agency informs 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 the agency's representations and our review, we agree that the requested information constitutes audit working papers that the district may withhold on behalf of the agency 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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eb

Ref: ID# 357550

Enc. Submitted documents

c: Requestor  
(w/o enclosures)