



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2014

Mr. Paul Roser
Public Information Office
Humble Independent School District
P.O. Box 2000
Humble, Texas 77347-2000

OR2014-09770

Dear Mr. Roser:

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# 525206.

The Humble Independent School District (the "district") received a request for a specified report. You claim the submitted information is excepted from disclosure under sections 552.111 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We note the submitted information includes a completed report subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

¹We 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.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). You state Attachment B consists of an incomplete internal audit report prepared by the district's internal auditor and authorized by the chairman of the district's board of trustees. You also state the internal audit is void of an action plan, which is dependent upon the findings of an external audit being conducted by outside auditors, and should therefore be treated as a draft. However, the internal auditor specifically states that "this report will serve as Internal Audit's final statement on the investigation." Upon review, we find the information in Attachment B consists of a completed report subject to section 552.022(a)(1). The district must release the completed report pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You seek to withhold the submitted information under sections 552.111 and 552.116 of the Government Code. However, sections 552.111 and 552.116 are discretionary exceptions and do not make information confidential under the Act. *See id.* § 552.116; *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111). Therefore, the completed report subject to section 552.022(a)(1) may not be withheld under section 552.111 or section 552.116 of the Government Code. However, because sections 552.117 and 552.136 of the Government Code make information confidential under the Act, we will address the applicability of these exceptions to the information subject to section 552.022.² We will also address your arguments under sections 552.111 and 552.116 for the remaining information that is not subject to section 552.022.

You assert Attachment C is excepted from disclosure under section 552.116 of the Government Code, which 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, a hospital 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:

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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, the bylaws adopted by or other action of the governing board of a hospital district, 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 Attachment C consists of audit working papers prepared or maintained by the district's external auditors. You also assert the external audit was authorized by the Humble Board of Trustees. Based on your representations and our review, we agree Attachment C constitutes audit working papers that the district may withhold pursuant to section 552.116(a) of the Government Code.³

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Accordingly, if the employee whose personal information we marked timely requested it be kept confidential, the district must withhold that information under section 552.117(a)(1) of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected,

³As our ruling is dispositive, we do not address your other argument to withhold this information.

assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Accordingly, the district must withhold the EZ tag identification numbers we have marked under section 552.136 of the Government Code.

In summary, the district may withhold the information in Attachment C pursuant to section 552.116(a) of the Government Code. If the employee whose personal information we marked timely requested it be kept confidential, the district must withhold that information under section 552.117 of the Government Code. The district must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/dls

Ref: ID# 525206

Enc. Submitted documents

c: Requestor
(w/o enclosures)