



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 1, 2015

Mr. W. Montgomery Meitler  
Senior Counsel  
Office of Legal Services  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2015-10618

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 # 565501 (PIR # 23797).

The Texas Education Agency (the "agency") received a request for certain records concerning 13 named entities.<sup>1</sup> You state you have released some information. You claim 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.<sup>2</sup>

Section 552.116 provides the following:

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<sup>1</sup>We note the agency sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>We assume 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 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, 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 [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] 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, 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.

*Id.* § 552.116. You state a portion of the submitted information constitutes audit working papers prepared or maintained by the agency's Division of Grants and Federal Fiscal Compliance in conjunction with audits of grant recipients. You further state the audits are authorized by section 7.021 (b)(1) of the Education Code, subsections 7.028(a)(1) and (a)(2) of the Education Code, section 76.770 of title 34 of the Code of Federal Regulations, and subpart D of Office of Management and Budget Circular A-133. *See* Educ. Code §§ 7.021(b)(1) (agency shall administer and monitor compliance with education programs), .028 (a)(1)-(2) (agency may monitor program to ensure compliance with federal law and grant requirements); 34 C.F.R. § 76.770 (state shall perform state determined procedures and evaluations to ensure subgrantee compliance with statutes and regulations). Additionally, you state some of the remaining information consists of audit working papers prepared or maintained by the agency's Division of Program Monitoring and Interventions in conjunction with pending audits. You inform us these audits were conducted under the authority granted to the agency by section 7.028 of the Education Code and section 80.40 of title 34 of the Code of Federal Regulations. *See* Educ. Code § 7.028(a)(1)-(2); 34 C.F.R.

§ 80.40(a) (requiring agency to monitor grant and subgrant supported activities to assure compliance with applicable federal requirements). Further, you state some of the remaining information consists of audit working papers prepared or maintained by the agency's Division of School Improvement and Support in conjunction with pending audits. You state these audits were conducted under the authority of section 7.021(b)(1), subsection 7.028(a)(1) and (a)(3), and section 39.106 of the Education Code. *See* Educ. Code §§ 7.021(a), .028(a)(1), (a)(3), 39.106 (defining scope and duties of a campus intervention team). Finally, you state the remaining submitted information consists of audit working papers prepared or maintained by the agency's Divisions of Complaints, Investigations, and Enforcement in conjunction with pending audits. You inform us these audits were authorized by section 39.057(a)(14) of the Education Code. Educ. Code § 39.057 (listing circumstances in which the commissioner shall authorize investigations). Upon review, we agree section 552.116 is applicable, in this instance. Therefore, you may withhold the submitted information under 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/akg

Ref: ID# 565501

Enc. Submitted documents

c: Requestor  
(w/o enclosures)