



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 20, 2015

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

OR2015-14716

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# 572100 (TEA PIR# 24378).

The Texas Education Agency (the "agency") received a request for several categories of information pertaining to three named current or former educators and a specified investigation.<sup>1</sup> You state the agency has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under

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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>The United States Department of Education Family Policy Compliance Office (the "DOE") 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 purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

The results of an examination administered under this section are confidential and are not subject to disclosure under Chapter 552, Government Code, unless:

- (1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or
- (2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). Upon review, we find the information you have marked consists of or reveals teacher certification examination results. You state, and we agree, subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Therefore, the agency must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

Section 552.116 of the Government Code provides the following:

(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:

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<sup>3</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.

(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 some of the remaining information consists of audit working papers prepared or maintained by the agency's Division of Federal and State Education Policy in conjunction with investigations in response to complaints under the federal Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400-1482. You further state the audits were authorized by sections 300.151 through 300.153 of title 34 of the Code of Federal Regulations, which require the agency to conduct audits of school districts as part of the state complaint procedures under IDEA. Additionally, you state the remaining information you have marked consists of audit working papers prepared or maintained by the agency's Division of Complaints, Investigations, and Enforcement in conjunction with a pending audit of the Plano Independent School District. You inform us the audit is authorized by section 39.057(a)(14) of the Education Code, which permits special accreditation investigations to be conducted as the commissioner of education determines necessary. *See* Educ. Code § 39.057 (listing circumstances in which the commissioner shall authorize investigations). Based on these representations and our review, we agree the information at issue consists of audit working papers for purposes of section 552.116. Therefore, the agency may withhold the information you have marked under section 552.116 of the Government Code.

In summary, the agency must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The agency may withhold the information you have marked under section 552.116 of the Government Code. The agency must release the remaining information.

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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/som

Ref: ID# 572100

Enc. Submitted documents

c: Requestor  
(w/o enclosures)