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ATTORNEY GENERAL OF TEXAS

August 7, 2015

Ms. Janet S. Bubert
Counsel for Hurst-Euleless-Bedford Independent School District
Bracket & Ellis, P.C.
100 Main Street
Fort Worth, Texas 76102

OR2015-16397

Dear Ms. Bubert:

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# 574539.

The Hurst-Euleless-Bedford Independent School District (the "district"), which you represent, received a request for all information submitted to the Texas Education Agency (the "TEA") or the Texas Board of Education, relating to a named individual. You state the district redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state you notified the TEA 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 TEA. We have also received comments from the requestor. *See id.* We have considered the submitted information and arguments.

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office 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 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>.

The TEA raises section 552.116 of the Government Code. Section 552.116 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 [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. The TEA states the information at issue consists of audit working papers maintained by the TEA's Division of Investigations and Fingerprinting in conjunction with a pending investigation of alleged educator misconduct. The TEA informs us the investigation is authorized by sections 21.031 and 21.041 of the Education Code and section 249.14 of title 19 of the Texas Administrative Code. *See* Educ. Code §§ 21.031(a) (TEA shall regulate and oversee standards of conduct of public school educators), .041(b) (TEA shall propose rules providing for disciplinary proceedings); 19 T.A.C. § 249.14(a) (TEA may obtain and investigate information concerning an educator's alleged improper conduct). Upon review, we agree section 552.116 is applicable in this instance. Therefore,

the district may withhold the submitted information under section 552.116 of the Government Code on behalf of the TEA.²

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,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 574539

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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²As our ruling is dispositive, we need not address the TEA's remaining argument against disclosure.