



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2015

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

OR2015-20832

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# 581793 (TEA PIR #25000).

The Texas Education Agency (the "agency") received a request for three categories of information pertaining to an investigation of Killeen Independent School District and any and all documents relating to any agency monitoring, visits, and on-sight investigations. You state you will release some information to the requestor. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You also state you have redacted information pursuant to section 552.130(c) of the Government Code.² You claim the submitted information is

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 or an adult student's 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 educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e).

excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted representative samples of information.³

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 [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.

Gov't Code § 552.116. You state a portion of the submitted information consists of audit working papers that were prepared or are maintained by the agency's Division of Program Monitoring and Interventions in conjunction with a pending audit. You inform us this audit was conducted under the authority granted to the agency by section 7.021(b)(1) of the

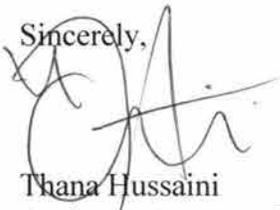
³We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Education Code. *See* Educ. Code § 7.021(b)(1) (agency shall administer and monitor compliance with education programs). Additionally, you explain section 7.028(a) of the Education Code authorizes the agency to monitor compliance with federal law and regulations, financial accountability, including compliance with grant requirements, and data integrity. *See id.* § 7.028(a). Furthermore, you state the remaining submitted information consists of audit working papers prepared or maintained by the agency's Divisions of Complaints, Investigations, and Enforcement and Program Monitoring and Interventions in conjunction with a pending audit. You inform us this audit was authorized by section 39.057(a)(14) of the Education Code. *Id.* § 39.057 (listing circumstances in which the commissioner shall authorize investigations). Based on your representations and our review, we agree the submitted information consists of audit working papers for purposes of section 552.116. Accordingly, the agency 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, 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TSH1/akg

Ref: ID# 581793

Enc. Submitted documents

c: Requestor
(w/o enclosures)