KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 18, 2015

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

OR2015-26658

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# 591267 (TEA PIR# 25515).

The Texas Education Agency (the "agency") received a request for copies of any complaints, agency responses to complaints, and special investigations regarding the Prosper Independent School District over a specified time period. You state you will release some information to the requestor. 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.[1] You claim the remaining requested 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.[2]

---

[1]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.

[2]We 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.

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:
>
> > (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 submitted 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 some of the submitted information consists of audit working papers prepared or maintained by the agency's Student Assessment Division Security Task Force in conducting investigations of testing irregularities in the administration of statewide assessment instruments. You inform us the audits are authorized by section 39.057(a)(8) of the Education Code, which permits the Commissioner of Education to authorize special accreditation investigations to be conducted in response to an allegation regarding, or an analysis using, a statistical method

result indicating a possible violation of an assessment instrument security procedure. *See* Educ. Code § 39.057 (listing circumstances in which the commissioner shall authorize investigations). Finally, you state the remaining submitted information 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 Prosper 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 id.* Based on these representations and our review, we agree the submitted information consists of audit working papers for purposes of section 552.116. Therefore, 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,

Abigail T. Adams

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 591267

Enc. Submitted documents

c: Requestor
(w/o enclosures)