



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 9, 2016

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
1111 West Sixth Street, Room A-240
Austin, Texas 78703-5399

OR2016-05461

Dear Ms. Janssen:

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# 602275.

The Austin Independent School District (the "district") received a request for all investigation reports, including working documents, completed by the district's internal audit department since January 1, 2015. The district states it is releasing the completed reports, but claims the submitted information is excepted from disclosure under section 552.116 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted representative sample of information.²

The United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable

¹Although the district raises section 552.101 of the Government Code in conjunction with section 552.116 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision No. 676 at 1-2 (2002).

²We 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.

information contained in education records for the purpose of our review in the open records ruling process under the Act.³ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). The district has submitted, among other things, unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of the education records.⁴ However, we will address the applicability of the claimed exception to the submitted information.

Section 552.116 of the Government Code provides as follows:

(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.

³A copy of this letter may be found on the Office of the Attorney General’s website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

⁴In the future, if the district does obtain parental consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

(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. The district asserts the submitted information consists of audit working papers prepared or maintained in conducting an audit of district activities. The district states the District Internal Auditor conducted the audit at issue as authorized by section 11.170 of the Education Code and the district's board of trustees. *See* Educ. Code § 11.170 (district's board of trustees may select internal auditor who reports directly to board). Upon review, we agree the submitted information constitutes audit working papers that the district may withhold pursuant to section 552.116(a) of the Government Code.

To conclude, the district may withhold the submitted information pursuant to section 552.116(a) of the Government Code. This ruling does not address the applicability of FERPA to the submitted information. Should the district determine that all or portions of the submitted information consist of "education records" that must be withheld under FERPA, the district must dispose of that information in accordance with FERPA, rather than the Act.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 602275

Enc. Submitted documents

c: Requestor
(w/o enclosures)