



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 7, 2016

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

OR2016-07859

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# 604790 (TEA PIR# 26224).

The Texas Education Agency (the "agency") received a request for all communications and documents pertaining to named individuals during a specified time period. You state you will release some information. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).<sup>1</sup> You also state you have withheld personal email addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim the remaining

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<sup>1</sup>The 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 <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

submitted 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.<sup>3</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you state some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letters Nos. 2015-23929 (2015) and 2015-20832 (2015). In Open Records Letters Nos. 2015-23929 and 2015-20832, we concluded the agency may withhold the submitted information under section 552.116 of the Government Code. There is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the agency must continue to rely on Open Records Letters Nos. 2015-23929 and 2015-20832 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

Section 552.116 of the Government Code provides,

(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

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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.

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 that were prepared or are maintained by the agency's Division of Program Monitoring and Interventions. You inform us this audit was conducted under the authority granted to the agency by section 7.021(b)(1) of the 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). Further, you state some of the submitted information consists of audit working papers maintained by the agency's Division of Educator Investigations in conjunction with investigations of alleged educator misconduct. You inform us the investigations are 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 id.* §§ 21.031(a) (the agency shall regulate and oversee standards of conduct of public school educators), .041(b) (the agency shall propose rules providing for disciplinary proceedings); 19 T.A.C. § 249.14(a) (the agency may obtain and investigate information concerning an educator's alleged improper conduct). In addition, 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. 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](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,

A handwritten signature in black ink, appearing to read "Ian Lancaster", written in a cursive style.

Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/akg

Ref: ID# 604790

Enc. Submitted documents

c: Requestor  
(w/o enclosures)