



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 21, 2016

Ms. Kristi Godden
Counsel for Edinburg Consolidated Independent School District
O'Hanlon, McCollom, & Demerath
808 West Avenue
Austin, Texas 78701

OR2016-14020

Dear Ms. Godden:

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# 614978 (ID# ECISD-16-043 and ECISD-16-055).

The Edinburg Consolidated Independent School District (the "district"), which you represent, received two requests for communications between the district and the Texas Education Agency (the "agency") regarding a specified elementary school, as well as specified disciplinary actions. You state the district does not have information responsive to the portion of the first request regarding disciplinary actions.¹ You further state the district will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.² See Gov't Code § 552.026 (incorporating FERPA into the Act). Although you take no position as to whether the submitted information is excepted

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

²The 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>.

under the Act, you state release of this information may implicate the interests of the agency. Accordingly, you state, and provide documentation showing, you notified the agency of the request for information and of its right to submit arguments to this office as to why the information at issue 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 agency. We have considered the submitted arguments and reviewed the submitted information.

The agency asserts the submitted information is subject to section 552.116 of the Government Code which 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.

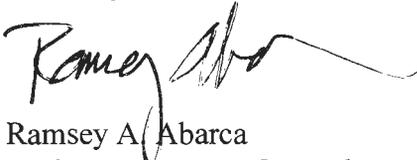
Gov't Code § 552.116. The agency states the submitted information consists of audit working papers prepared or maintained by the agency's Student Assessment Division

Security Task Force in conducting an investigation of testing irregularities in the administration of statewide assessment instruments. The agency states the audit is 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). 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 agency.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 614978

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Third Party
(w/o enclosures)