



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 6, 1998

Mr. David Anderson
Chief Counsel, Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR98-1581

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 116463.

The Texas Education Agency (the "agency") received a request for "a copy of the report on the Dallas ISD Migrant Education Program investigation." In response to the request, you submit to this office for review the information which you assert is responsive. The agency seeks to withhold the requested information based on sections 552.022, 552.101, and 552.116 of the Government Code. We have considered the exceptions you claim and have reviewed the document at issue.

You contend that because section 552.022(1) of the Government Code deems as public information "**a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,**" the "preliminary" report is not subject to the act. Section 552.022 of the Government Code provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information:

- (1) a *completed* report, audit, evaluation, or investigation made of, for, or by a governmental body. [Emphasis added.]

Although section 552.022(1) provides that completed reports made of, for, or by a governmental body are public information, this section does not imply that "incomplete" reports are automatically excepted from required disclosure. Open Records Decision No. 460 (1987) (construing predecessor statute). The applicable test for required disclosure is twofold: whether the requested information is collected, assembled, or maintained by a governmental body, and, if so, whether the information falls within one of the specific exceptions to disclosure under subchapter C of the act. *Id.* Consequently, the mere fact the

audit is in a "preliminary" stage does not except the audit from required public disclosure. Accordingly, the agency may not withhold the preliminary audit on these grounds.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This section also excepts from disclosure information that is made confidential by statute. Subchapter D of chapter 39 of the Education Code provides standards and procedures for, among other things, on-site investigations of public schools for the purpose of determining accreditation status. Section 39.076 provides:

- (a) The agency shall adopt written procedures for conducting on-site investigations under this subchapter. The agency shall make the procedures available to the complainant, the alleged violator, and the public. Agency staff must be trained in the procedures and must follow the procedures in conducting the investigation.
- (b) After completing an investigation, the agency shall present preliminary findings to any person the agency finds has violated a law, rule, or policy. Before issuing *a report with its final findings*, the agency must provide a person the agency finds has violated a law, rule, or policy an opportunity for an informal review by the commissioner or a designated hearing examiner. [Emphasis added.]

Section 39.076(b) contemplates two distinct sets of records: the "preliminary findings" and a report of "final findings." Section 39.076(b) contains no language that makes either set of records confidential; it merely provides that before a report of final findings is released to the public, the person who has allegedly violated a law, rule, or policy must be granted an opportunity to respond to the preliminary findings. In this regard, section 39.076(b) "merely provides certain procedural prerequisites that must be met before the TEA may disseminate the [final] 'report' of its findings to the public." Open Records Letter No.95-1129 (1995).

The records at issue do not consist of the TEA's "report with its final findings," but could only be considered at most a part of the facts and findings underlying TEA's investigation. For information to be withheld because of statutory confidentiality under section 552.101 of the Government Code, the relevant statute must *explicitly* state the confidentiality of the information at issue -- confidentiality cannot be implied from the statute's structure. Open Records Decision No. 465 (1987). Consequently, the submitted preliminary report and related information that is the subject of the current open records request are not confidential under section 39.076(b).

The Seventy-fifth Legislature amended section 552.116 of the Government Code to read as follows:

EXCEPTION: AUDIT WORKING PAPERS. An audit working paper or draft audit report of the state auditor or of another state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from the requirements of Section 552.021.

See Act of May 30, 1997, H.B. 2906, § 10, 75th Leg., R.S. (To be codified at Gov't Code § 552.116).

Additionally, the Seventy-fifth Legislature amended the definition contained within section 321.001 of the Government Code to include a definition of an audit working paper, which reads as follows:

(1) "Audit working paper" means all documentary and other information prepared or maintained in conducting an audit or investigation, including all intra-agency and interagency communications relating to an audit or investigation and all draft reports or portions thereof.

See Act of May 30, 1997, H.B. 2906, § 2, 75th Leg., R.S. (to be codified at Gov't Code § 321.001). You represent that the agency through the "School Financial Audits Division and the Migrant Education Division issued a preliminary report regarding its audit findings and a copy was mailed . . . to Dr. James H. Hughey, Acting General Superintendent of Dallas ISD." Accordingly, as it appears that the agency conducted an audit investigation concerning the requested information, we conclude that the information was "prepared or maintained in conducting an audit or investigation." Therefore, we conclude that the information at issue is excepted from disclosure under section 552.116 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have a question about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref: ID# 116463

Enclosure: Submitted information

cc: Ms. Gracie Cortez
4701 Spanish Trail
Grand Prairie, Texas 75208
(w/o enclosures)