



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 19, 1998

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

OR98-2758

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 120014.

The Texas Education Agency ("TEA") received a request for "a copy of the citizen complaint pertaining to board and administration travel." You assert that the requested information is excepted from required public disclosure by sections 552.103 and 552.116 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.116 of the Government Code excepts from disclosure

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.

The legislation enacting section 552.116 also defines the term "audit working paper" as

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.

Act of May 29, 1997, 75<sup>th</sup> Leg., R.S., ch. 1122, § 2, 1997 Tex. Gen. Laws 4266, 4267 (amending Gov't Code 321.001). Section 321.0136 of the Government Code defines "investigation" for purposes of chapter 321 as

an inquiry into specified acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt, or use of state funds, or into specified financial transactions or practices that may involve such impropriety, malfeasance, or nonfeasance.

Gov't Code § 321.0136.

We have reviewed the submitted information and conclude that the information does not constitute "audit working paper[s]" as contemplated in Government Code section 552.116 or section 321.001. *See* Gov't Code §§ 321.0131-.016 (defining state audits and investigations); Open Records Decision No. 580 at 9-10 (1990). Accordingly, TEA may not withhold the requested information based on section 552.116 of the Government Code.

Section 552.103(a) excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You advise that the "the agency is currently conducting an investigation of the complaint regarding certain expenditures of Lipan ISD," and that "[t]he State Board of Educator Certification could institute a licensing action based upon potential findings of the ongoing investigation." In our opinion, you have failed to sufficiently demonstrate that the

agency reasonably anticipates litigation to which the agency will be a party. Therefore, you may not withhold the requested information under section 552.103(a).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 120014

Enclosures: Submitted information

cc: Mr. Nelson Eichman  
Superintendent  
Lipan Independent School District  
211 N. Kickapoo St.  
Lipan, Texas 76462  
(w/o enclosures)