



April 7, 2000

Mr. David Anderson
General Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2000-1380

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code (the "Act"). Your request was assigned ID# 133876.

The Texas Education Agency (the "agency") received a request for a copy of the preliminary District Effectiveness and Compliance audit report for the Arlington Independent School District. You have submitted the responsive report for our review. You claim that the report is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.116 of the Act provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from [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 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 indicate that the submitted report was prepared by the agency's Division of Accountability Evaluations pursuant to section 39.076 of the Education Code. Chapter 39 of the Education Code governs public school system accountability. Subchapter D of chapter 39 governs accreditation of school districts and authorizes the agency to conduct on-site investigations of school district performance. Section 39.076 provides in pertinent part:

(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.

Educ. Code § 39.076(b). You indicate that the document that you submitted is a preliminary report prepared pursuant to section 39.076. You claim that it represents an audit working paper or draft audit report that is excepted from disclosure under section 552.116(a) of the Act. We have considered your arguments and have reviewed the submitted document. Assuming that the document is in fact a *preliminary* investigation report prepared by the agency under the authority of section 39.076, then we believe that it is excepted from disclosure as an audit working paper under section 552.116 of the Government Code. *See also* Open Records Decision No. 580 (1990) (expanding ambit of concept of audit working papers under predecessor statute to section 552.116).

In the event that the submitted report is not a preliminary document, then we believe that section 552.022 of the Act requires its release. Section 552.022 provides in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Thus, if the submitted document represents a completed report, audit, evaluation, or investigation, then it is subject to required disclosure under section 552.022(a)(1) unless another provision of law makes it confidential. Although you express concern that the report contains confidential information, you have cited no authority, and

we are aware of none, under which the submitted report is deemed to be confidential.¹ Therefore, if the report is not a preliminary document, then we believe that section 552.022(a)(1) of the Act requires its release.

In summary, if the submitted report is a preliminary document, the agency may withhold it pursuant to section 552.116 of the Act. Otherwise, the agency must release it pursuant to section 552.022. This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

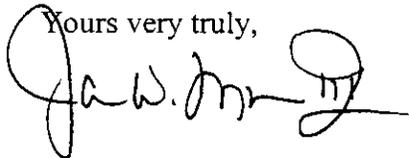
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹Section 552.101 of the Act, which excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," protects information that is deemed to be confidential under other constitutional, statutory, or judicial authority. *See* Open Records Decision Nos. 620 at 3 (1993), 335 at 2 (1982).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Yours very truly,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 133876

Encl. Submitted documents

cc: Ms. Alice Robinson
Arlington Morning News
1112 Copeland Road, Suite 400
Arlington, Texas 76011
(w/o enclosures)