



September 8, 2000

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

OR2000-3462

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138737.

The Texas Education Agency (the "agency") received a request for the Accountability Data Tables (Part I) and 2000 Accountability Data Table sent to Region 19 districts. You claim that the requested information is excepted from disclosure under sections 552.114 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.<sup>1</sup>

Section 552.116 of the Government Code, as amended by the Seventy-sixth Legislature, provides in relevant part:

(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 [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [required 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.

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<sup>1</sup>We assume that 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

(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 the requested information is part of the process of establishing accountability ratings for school districts and campuses pursuant to Chapter 39 of the Texas Education Code. You state that the requested information is the initial agency report to a district on its data and is subject to appeal or correction before the final data tables are issued in August. You assert that the submitted representative samples of information fall within the ambit of agency audit working paper under section 552.116. After reviewing your arguments and the submitted representative samples of information, we agree that the accountability rating system is an audit for the purposes of section 552.116 of the Government Code. We further conclude that the submitted representative samples of information are audit working papers under section 552.116(b)(2). Therefore, the agency may withhold the submitted representative samples of information under section 552.116 of the Government Code.

Because we are able to make a determination pursuant to section 552.116 of the Government Code, we need not address your section 552.114 claim. 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

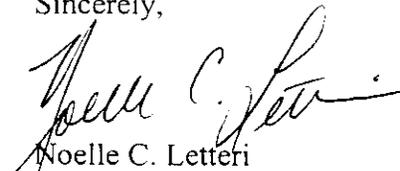
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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.

Sincerely,



Noelle C. Letteri  
Assistant Attorney General  
Open Records Division

NCL/pr

Ref: ID# 138737

Encl. Submitted documents

cc: Mr. Gustavo Reveles Acosta  
El Paso Times Reporter  
P.O. Box 20  
El Paso, Texas 79999  
(w/o enclosures)