ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2006

Mr. Lorenzo Nieto
Assistant Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2006-11130

Dear Mr. Nieto:

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# 260070.

The Texas Education Agency ("TEA") received a request for copies of the complaint and all documents supporting a claim against the requestor's client. You claim that the requested information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.116 of the Government Code provides as follows:

> (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, or a joint board operating under Section 22.074, Transportation Code, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.
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> (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, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.
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> (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
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> (B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state that the requested information pertains to an ongoing investigation of a certified educator. You inform us that the State Board for Educator Certification ("SBEC") enforces standards of conduct for certified educators in Texas public schools under chapter 21 of the Education Code.[1] *See* Educ. Code §§ 21.031, 21.041(b)(1). You further explain that TEA litigates enforcement proceedings on behalf of SBEC under subchapter B of chapter 21 of the Education Code. *See id.* §§ 21.035, 21.041(b)(7); 19 T.A.C. § 249.46 *et seq*. You state that the submitted information consists of audit working papers prepared and maintained by SBEC during the course of an incomplete investigation into certain acts or omissions on the part of a named educator pursuant to section 249.14 of title 19 of the Texas Administrative Code. *See* 19 T.A.C. § 249.14 (providing that SBEC may "obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to [chapter 249]"); *see also* Educ. Code § 21.041(b)(1) (relating to SBEC's power and duty to propose rules that provide for the regulation of educators and the general administration of subchapter B). Based on your representations and our review of the submitted information, we agree that the submitted information constitutes audit working papers that may be withheld under section 552.116 of the Government Code.

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

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[1]We note that all administrative functions, staff, and resources of the SBEC have been transferred to TEA.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Hadassah Schloss at the Office of the Attorney General 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,

Shelli Egger

Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 260070

Enc. Submitted documents

c: Ms. Bobbie Edmonds
Law Offices of Bobbie Edmonds
209 South Jennings Avenue
Fort Worth, Texas 76104
(w/o enclosures)