



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2009

Mr. John A. Kazen
KM&P, L.L.P
P.O. Box 6237
Laredo, Texas 78042-6237

OR2009-06405

Dear Mr. Kazen:

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# 342915.

The Laredo Independent School District ("LISD"), which you represent, received a request for the final report related to a specific internal investigation, as well as the following categories of information related to the same report: the names of questioned persons, the criteria for selecting these persons, the questions asked and answers thereto, the job description of a specific person, and the disciplinary recommendation by a specific person for a specific person. You state that the final report has not yet been completed.¹ You claim that the submitted information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information consists of questionnaires and a draft report. LISD has not submitted any documents related to the criteria for selecting persons for questioning, the job description of a specific person, or the disciplinary recommendation by a specific person for a specific person. Therefore, to the extent LISD maintained any documents responsive to these remaining items on the date LISD received the request, we

¹We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

assume that LISD has already released such information. *See* Gov't Code § 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply, then it must release information as soon as possible).

We next note that two of the questionnaires currently at issue were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-04341 (2009). In that ruling, we concluded that LISD may withhold these questionnaires under section 552.116 of the Government Code. Because we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, LISD may continue to withhold these questionnaires in accordance with Open Records Letter No. 2009-04341. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We next address your arguments against disclosure of the remaining information at issue. Section 552.116 of the Government Code provides:

(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, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure under the Act]. 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, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) 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

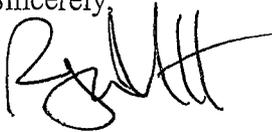
(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You inform this office that the remaining information at issue consists of working papers of an audit conducted by LISD's internal auditor. You explain that this audit was authorized by action of the LISD Board of Trustees. Based on your representations and our review, we agree that the remaining information at issue consists of audit working papers as defined in section 552.116(b)(2). Accordingly, LISD may withhold this information pursuant to section 552.116 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/cc

Ref: ID# 342915

Enc. Submitted documents

cc: Requestor
(w/o enclosures)