



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2009

Mr. Humberto F. Aguilera
Escamilla & Poneck, Inc.
P.O. Box 200
San Antonio, Texas 78291-0200

OR2009-09537

Dear Mr. Aguilera:

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# 348669.

The San Antonio Independent School District (the "district"), which you represent, received a request for all reports to the Texas Education Agency, Texas State Board of Education Certification, or any other state or federal agency concerning testing irregularities during a specified school year. You claim that the requested information is excepted from disclosure under section 552.116 of the Government Code. Further, the district notified the Texas Education Agency (the "agency") of the request so that it may protect its interest in the withholding of the submitted information. We have also received and considered the agency's assertion to withhold the submitted information pursuant to section 552.116 of the Government Code. ~~See Gov't Code § 552.304 (interested party may submit written comments concerning availability of requested information).~~ We have considered the submitted arguments and reviewed the submitted information.¹

Section 552.116 of the Government Code provides as follows:

¹We 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). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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 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.

(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.

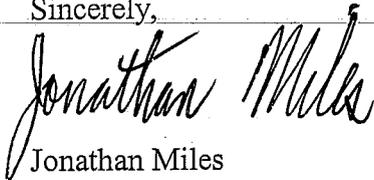
Gov't Code § 552.116. You contend that the submitted information constitutes audit working papers prepared or maintained as part of an investigation of the district by the auditor. We note, however, that section 552.116 is intended to protect the auditor's interests. In this instance, the submitted documents indicate that any audit would be conducted by the agency, rather than by the district. As the auditee, the district cannot assert section 552.116 in order to protect its own interest in withholding the information. However, the agency also asserts section 552.116 for the submitted information. The agency states that the information at issue consists of audit working papers prepared or maintained by the agency's Student Assessment Division Security Task Force "in conducting investigations of testing irregularities in the administration of statewide assessment instruments." The agency informs us that section 39.075(a)(8) of the Education Code authorizes the Commissioner of Education to permit a special accreditation investigation in response to an alleged violation of an assessment instrument security procedure. *See* Educ. Code § 39.075(a) (listing instances in which the commissioner "shall" authorize investigations). Based on the agency's representations and our review, we agree that the requested information constitutes

audit working papers that the district may withhold on behalf of the agency 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 348669

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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