



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2010

Mr. W. Montgomery Meitler
Assistant Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2010-03119

Dear Mr. Meitler:

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# 373323 (TEA PIR# 12363).

The Texas Education Agency (the "agency") received a request for information pertaining to Jamie's House Charter School (the "charter school").¹ You state you will release most of the requested information to the requestor. You claim 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.

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

¹We note that the agency asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

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.

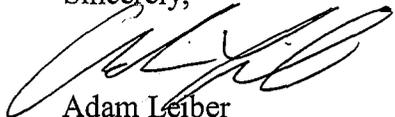
Gov't Code § 552.116. You inform this office that a portion of the submitted documents consists of "audit working papers prepared or maintained by [the agency's] Division of Program Monitoring and Interventions in conjunction with an audit of [the charter school]." You state that audits such as this are authorized by section 7.028 of the Education Code and section 80.40 of title 34 of the Code of Federal Regulations. *See* Educ. Code § 7.028 (authorizing agency to monitor charter school compliance with educational programs as necessary to ensure compliance with federal law, regulations, and financial accountability), 34 C.F.R. § 80.40(a) (requiring agency to monitor grant and subgrant supported activities to assure compliance with applicable federal requirements). Additionally, you state the remaining documents were "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." You inform 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 (listing circumstances in which the commissioner shall authorize investigations). Based on your representations and our review, we agree that the information at issue consists of audit working papers for purposes of section 552.116 of the Government Code. Accordingly, the

agency may withhold the entirety of the submitted information under 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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 373323

Enc. Submitted documents

c: Requestor
(w/o enclosures)