



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2010

Ms. Elisabeth A. Donley
Attorney for Garland Independent School District
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2010-18338

Dear Ms. Donley:

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# 403628.

The Garland Independent School District (the "district"), which you represent, received a request for four specified categories of information pertaining to the requestor's client, including correspondence between the district and the Texas Education Agency (the "TEA") that pertain to allegations related to the requestor's client. You state the district does not have some of the requested information.¹ You also state the district is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.² You inform us the district has released or will release some of the requested information, but claim some of the submitted information is excepted from disclosure under sections 552.117, 552.135, and 552.137 of the Government Code. You

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

also state, and provide documentation showing, the district notified the TEA of the request and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the TEA. We have considered the submitted arguments 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, 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.

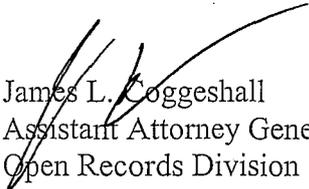
Id. § 552.116. The TEA asserts section 552.116 for the submitted information. The TEA states the information at issue consists of audit working papers prepared or maintained by the TEA's Student Assessment Division Security Task Force "in conducting investigations of testing irregularities in the administration of statewide assessment instruments." The TEA informs us 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 TEA's

representations and our review, we agree the submitted information constitutes audit working papers that the district may withhold from release on behalf of the TEA pursuant to section S552.116 of the Government Code.³

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/vb

Ref: ID# 403628

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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³As our ruling is dispositive, we do not address the district's arguments to withhold the submitted information.