



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2011

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

OR2011-04693

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# 413633 (TEA PIR Nos 14626, 14669, 14670).

The Texas Education Agency (the "agency") received three requests for information pertaining to the audit of a specified school district. One of the requestors additionally seeks "the TCER charter report." You claim that the requested information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you state, and provide documentation showing, the agency sought clarification from one of the requestors pertaining to her request for "the TCER charter report." *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information, rather than for specific records, governmental body may advise requestor of types of information available so request may be properly narrowed). You state the agency has not received clarification of the portion of the request at issue. Thus, we find the agency is not required to release information in response to that portion of

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

the request. However, if the requestor clarifies that portion of the request for information, the agency must seek a ruling from this office before withholding any responsive information from the requestor. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010).

Next, we note one of the requestors seeks the final report, which, you state, has not yet been completed. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a continuing request to supply information as such information is prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the agency need not comply with the request to provide information on an ongoing basis.

Section 552.116 of the Government Code provides the following:

(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

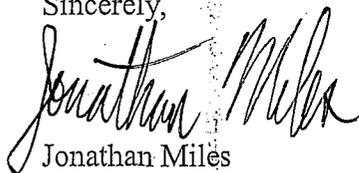
(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You inform this office the submitted documents consists of "audit working papers prepared or maintained by [the agency's] Division of Financial Audits and Division of Program Monitoring and Interventions in conjunction with audits of [the named school district]." You inform us the audit was authorized by section 39.057(a)(4) the Education Code, which permits special accreditation investigations to be conducted in response to established compliance reviews of a school district's financial accounting practices and state and federal program requirements. *See* Educ. Code § 39.057 (listing circumstances in which the commissioner shall authorize investigations). Based on your representations and our review, we agree 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 413633

Enc. Submitted documents

c: Requestor
(w/o enclosures)