



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2011

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

OR2011-14128

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# 431587.

The Harlandale Independent School District (the “district”), which you represent, received a request for information relating to investigations or audits regarding several matters during the last 12 months. You claim the submitted representative sample of information is excepted from disclosure under section 552.116 of the Government Code. We also received arguments under section 552.116 from the Texas Education Agency (“TEA”). *See* Gov’t Code § 552.304 (any interested party may submit comments stating why information at issue should or should not be released). We have considered all the submitted arguments and reviewed the submitted information.¹

We note the requestor does not seek access to student or medical information or social security numbers. Thus, as those types of information are not responsive to the instant request for information, this decision does not address their public availability.²

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. *See* Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²You state the district has redacted some of the submitted information pursuant to the Family Educational Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code. The 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. A copy of the DOE’s letter to this office is posted on the Attorney General’s website at: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

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, a hospital 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]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [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, the bylaws adopted by or other action of the governing board of a hospital district, 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.

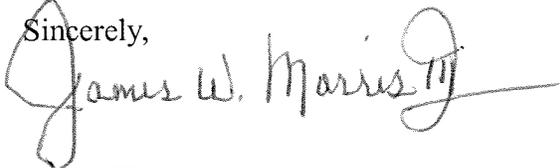
Gov’t Code § 552.116(b)(2); Act of May 29, 2011, 82nd Leg., R.S., H.B. 2947, §§ 1, 2 (to be codified as amendment to Gov’t Code § 552.116(a), (b)(1)). TEA claims section 552.116 for the submitted responsive information. TEA explains the information at issue consists of incident reports and accompanying documentation submitted to TEA by the district. TEA asserts these documents are audit working papers prepared or maintained by TEA’s Student Assessment Division Security Task Force in conducting investigations of testing irregularities in the administration of statewide assessment instruments. TEA states these investigations are authorized by section 39.057(a)(8) of the Education Code, which permits the commissioner of education to authorize a special accreditation investigation to be conducted in response to a possible violation of assessment instrument security procedures. *See* Educ. Code § 39.057(a) (listing instances in which the commissioner “shall” authorize investigations). Based on TEA’s representations and our review of the information at issue,

we conclude the responsive information constitutes audit working papers the district may withhold on behalf of TEA under section 552.116 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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 431587

Enc: Submitted documents

c: Requestor
(w/o enclosures)

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³As we are able to make this determination, we need not address the district's arguments against disclosure of the submitted information.