



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2011

Mr. Humberto F. Aguilera
For the South San Antonio Independent School District
Escamilla, Poneck & Cruz, L.L.P.
P.O. Box 200
San Antonio, Texas 78291

OR2011-14358

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# 431937.

The South San Antonio Independent School District (the "district") received a request for any investigation or audit regarding cheating, credit recovery, testing irregularities, student attendance, dropouts, or ethical improprieties from the last twelve months. You state the district redacted student-identifying information from the information submitted to this office pursuant to the federal Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under section 552.116 of the Government Code. You also state, and provide documentation showing, the district notified the Texas Education Agency (the "agency") 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

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that 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 that 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>.

received comments from the agency. We have considered the exception you claim and reviewed the submitted representative sample of information.²

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 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, 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.

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)). You contend the submitted information constitutes audit working papers prepared or maintained as part of an investigation by the auditor. We note, however, section 552.116 is intended to protect the auditor's interests. In this instance, the audit was conducted by the agency. As the auditee, the district cannot assert section 552.116

²We 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 those submitted to this office.

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 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 section 39.057(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.³ See Educ. Code § 39.057(a) (listing instances in which the commissioner "shall" authorize investigations). Based on the agency's representations and our review, we agree the submitted information constitutes audit working papers the district may withhold on behalf of the agency pursuant to section 552.116.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 431937

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Although the district claims the audit is authorized under section 39.075 of the Education Code, the 81st Legislature renumbered that section to section 39.057 of the Education Code. Act of May 31, 2009, 81st Leg., R.S., ch. 895, § 59, 2009 Tex. Sess. Law Serv. 2354, 2385 (Vernon).