



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2011

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

OR2011-14424

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# 432172.

The Harlandale Independent School District (the "district"), which you represent, received a request for information pertaining to alleged or confirmed incidents of cheating or procedural violations on the TAKS test. You state the district 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.¹ You claim the remaining information is excepted from disclosure under section 552.116 of the Government Code.² We have considered the exception you claim and reviewed the submitted representative sample of information.³ We have also received and considered comments from the requestor

¹We note 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 or student 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>.

²Although you initially raised section 552.101 of the Government Code, you have not submitted any arguments explaining how this exception applies to the submitted information. Therefore, we assume you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302.

³We 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.

and an interested third party, the Texas Education Agency (the “agency”). *See* Gov’t Code § 552.304 (interested third party may submit comments stating why information should or should not be released).

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.

Act of May 29, 2011, 82nd Leg., R.S., H.B. 2947, §§ 1, 2 (to be codified as amendments to Gov’t Code § 552.116(a) and (b)(1)); Gov’t Code § 552.116(b)(2). Section 552.116 is intended to protect the auditor’s interests. In this instance, the audits are being conducted by the agency. As the auditee, the district cannot assert section 552.116 in order to protect its own interest in withholding the information. However, the district states the submitted information consists of Student Assessment Incident Report Forms and accompanying documentation all of which were forwarded to the agency. The agency argues the submitted information 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 that 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. *See* Educ. Code § 39.057 (listing circumstances in which the commissioner shall authorize investigations). Based on the agency’s representations and our review, we agree the requested information constitutes audit working papers that the district may withhold on behalf of the agency pursuant to 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/ag

Ref: ID# 432172

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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(w/o enclosures)