



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 6, 2011

Mr. Humberto F. Aguilera  
For the San Antonio Independent School District  
Escamilla, Poneck & Cruz, L.L.P.  
P.O. Box 200  
San Antonio, Texas 78291-0200

OR2011-14489

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# 432495.

The San Antonio Independent School District (the "district"), which you represent, received a request for "[a]ny investigations/audits regarding cheating, credit recovery, testing irregularities, student attendance, dropouts, financial and/or ethical improprieties" during a specified time. You state the district is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>1</sup> You state the district has released some responsive information. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. You also state, and provide documentation showing, the district notified the Texas Education Agency (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.

Initially, we note the requestor has specifically excluded from her request the social security numbers and confidential medical information. Thus, any such information is not responsive

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<sup>1</sup>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. 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>.

to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released in response to the instant request.

Section 552.116 of the Government Code provides:

(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 [required 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, 82<sup>nd</sup> Leg., R.S., H.B. 2947, §§ 1, 2 (to be codified as amendments to Gov't Code § 552.116(a), (b)(1)). 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 552.116 of the Government Code.<sup>2</sup>

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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 432495

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. W. Montgomery Meitler  
Assistant Counsel  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we do not address the district's arguments to withhold the submitted information.