



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2011

Mr. Fortunato G. Paredes
Escamilla, Poneck & Cruz, L.L.P.
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2011-16029

Dear Mr. Paredes:

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# 434926.

The United Independent School District (the "district"), which you represent, received a request for correspondence from the district to the Texas Education Agency (the "TEA") for a specified time period regarding a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.114, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the United States Department of Education Family Policy Compliance Office informed this office that the Family Educational Rights and Privacy Act ("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.¹ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). You state that the submitted information contains student identifying education records that are

¹A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

protected under FERPA. Because our office is prohibited from reviewing these education records, we will not address the applicability of FERPA to any of this information. Such determinations under FERPA must be made by the educational authority in possession of the education records.² Accordingly, we also do not address your arguments under section 552.114 of the Government Code. *See* Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA).

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.

²In the future, if the district does obtain parental consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

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), (b)(1)). For purposes of section 552.116, a school district must establish that an audit is authorized by a resolution or other action of a board of trustees of the school district. You state that the submitted information is related to an investigation conducted pursuant to section 21.041 of the Education Code and section 249.14 of title 19 of the Texas Administration Code. We note that section 21.041 of the Education Code and section 249.14 of title 19 of the Texas Administration Code authorize the TEA, and not the district, to investigate an educator. *See* Educ. Code § 21.041; 19 T.A.C. ch. 249. You have provided no arguments that the information at issue constitutes working papers of an audit conducted by the district. Thus, we conclude that you have failed to establish that section 552.116 of the Government Code is applicable to any of the submitted information, and it may not be withheld under this exception. As no further exceptions to disclosure have been raised, the submitted information must be released.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 434926

Enc. Submitted documents

cc: Requestor
(w/o enclosures)