



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 14, 2012

Mr. S. Anthony Safi
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.
P.O. Box 1977
El Paso, Texas 79999-1977

OR2012-02299

Dear Mr. Safi:

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# 445296.

The El Paso Independent School District (the "district"), which you represent, received a request for information provided to the U.S. Department of Education (the "DOE") in response to a specified request and any follow-up correspondence between the district and the DOE.¹ You claim that the requested information is excepted from disclosure under sections 552.103, 552.108, 552.111, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We also have considered comments submitted by the DOE and by the

¹The requestor excluded from the request any information excepted from disclosure under the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. We 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>.

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 (1988) at 6, 497 (1988).

requestor. *See* Gov't Code § 552.304 (interested 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 under the Act]. 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.

Id. § 552.116. Section 552.116 is intended to protect the auditor's interests. In this instance, the audit is being conducted by the DOE's Office of Inspector General (the "DOE-OIG") pursuant to authority granted to it by the Inspector General Act of 1978. *See* 5 U.S.C. App. 3. As the auditee, the district cannot assert section 552.116 in order to protect its own interest in withholding the information.

The DOE also asserts section 552.116 for the submitted information. However, the DOE is not 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. Thus, section 552.116 is not applicable, and the district may not withhold any of the submitted information under section 552.116 of the Government Code.

Although you also raise sections 552.103, 552.108, and 552.111 of the Government Code as exceptions to disclosure, you have provided no arguments regarding the applicability of these sections. We, therefore, assume you no longer assert sections 552.103, 552.108, and 552.111 of the Government Code. *See* Gov't Code §§ 552.301(b), (e), .302. The submitted information, therefore, must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 445296

Enc. Submitted documents

c: Requestor
(w/o enclosures)