



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 4, 2012

Ms. Kelli H. Karczewski  
Karczewski Bradshaw L.L.P.  
For Nacogdoches Independent School District  
315 North Church  
Nacogdoches, Texas 75961

OR2012-06590

Dear Ms. Karczewski:

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# 452674.

The Nacogdoches Independent School District (the "district"), which you represent, received a request for information in the requestor's file regarding a specified investigation and the information sent to the Texas Education Agency (the "TEA"). You claim the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. You indicate you have notified the TEA of the request and of its right to submit arguments to this office as to why the information should not be released.<sup>1</sup> *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released). We have received comments from the TEA. We have also received comments from the requestor. Thus, we have considered the submitted arguments and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, does not permit state and local educational authorities

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<sup>1</sup>We note the TEA has assumed the duties of the SBEC. The 79th Texas Legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to the TEA, effective September 1, 2005.

to disclose to this office, without parental consent or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>2</sup> 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"). In this instance, the submitted information includes unredacted education records. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>3</sup> We will, however, consider the arguments against disclosure of the submitted information.

The TEA asserts the submitted information is excepted in its entirety under section 552.116 of the Government Code. Section 552.116 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

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<sup>2</sup>A 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>.

<sup>3</sup>In the future, if the district does obtain parental or an adult student's 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.

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.

Gov’t Code § 552.116. The TEA asserts the submitted information consists of audit working papers prepared or maintained by the TEA’s Division of Investigations and Fingerprinting in the course of a pending investigation of alleged educator misconduct. Further, the TEA states this investigation is authorized by sections 21.031 and 21.041 of the Education Code and section 249.14 of title 19 of the Texas Administrative Code. *See* Educ. Code §§ 21.031(a) (TEA shall regulate and oversee standards of conduct of public school educators), .041(b) (TEA shall propose rules providing for disciplinary proceedings); 19 T.A.C. § 249.14(a) (TEA may obtain and investigate information concerning an educator’s alleged improper conduct). We note the requestor specifically seeks, and you request a ruling on, the documents sent to the TEA. As noted above, audit working papers consist of all information prepared or *maintained* in conducting an audit. Gov’t Code § 552.116(a)(2). Based on these representations and our review of the submitted information, we find the submitted information consists of, and the requestor seeks, audit working papers maintained by the TEA. Thus, the district may generally withhold this information under section 552.116 of the Government Code.

We note the requestor asserts a right of access to the submitted information under section 552.023 of the Government Code. Under section 552.023, a person has a special right of access to information that is excepted from public disclosure under laws intended to protect the person’s own privacy interest as the subject of the information. *See id.* § 552.023. However, this information is excepted under section 552.116, and not by a law intended to protect individual privacy interests. Thus, the requestor does not have a right of access to this information. Therefore, the district may withhold the submitted information under section 552.116 of the Government Code. As our ruling is dispositive, we do not address the remaining arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/em

Ref: ID# 452674

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. W. Montgomery Meitler  
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