



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2012

Mr. W. Montgomery Meitler
Assistant Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701

OR2012-07142

Dear Mr. Meitler:

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# 453819 (TEA PIR# 17121).

The Texas Education Agency (the "agency") received a request for information related to an investigation of a specified grant recipient.¹ You state the agency has released some of the requested information. Further, you state the agency is withholding some of the requested information in accordance with Open Records Letter Nos. 2011-11972 (2011) and 2011-01439 (2011).² See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body,

¹You note that the agency received a clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²In Open Records Letter Nos. 2011-11972 and 2011-01439, we concluded the agency may withhold the submitted information pursuant to section 552.116 of the Government Code.

and ruling concludes that information is or is not excepted from disclosure). You claim that the remaining requested information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

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.

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 that submitted to this office.

Gov't Code § 552.116(a), (b)(1)-(2). You state the submitted information consists of audit working papers that were prepared or are maintained by the agency's Division of Financial Audits in conjunction with a pending audit of the Shekinah Learning Institute. You inform us the audit was conducted under the authority granted to the agency by section 7.021(b)(1) of the Education Code, subsections 7.028(a)(1) and (a)(2) of the Education Code, section 76.770 of title 34 of the Code of Federal Regulations and subpart D of Office of Management and Budget Circular A-133. *See* Educ. Code §§ 7.021(b)(1) (agency shall administer and monitor compliance with education programs), .028 (a)(1), (a)(2) (agency may monitor program to ensure compliance with federal law and grant requirements); 34 C.F.R. § 76.770 (state shall perform state determined procedures and evaluations to ensure subgrantee compliance with statutes and regulations). Based on your representations and our review of the information at issue, we agree section 552.116 is applicable in this instance. We therefore conclude the agency may withhold the remaining requested information pursuant to section 552.116.

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# 453819

Enc. Submitted documents

c: Requestor
(w/o enclosures)