



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2012

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

OR2012-07813

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# 456532.

The El Paso Independent School District (the "district"), which you represent, received a request for "all documents provided to the Department of Education [the "DOE"] for its audit since [the requestor's] November 2011 request [and] any communication, including emails, from the [DOE] to the district regarding the audit since December 2010."¹ The district received a second request, from a different requestor, for the "report of preliminary findings of the [DOE]'s audit . . . and any follow-up correspondence regarding those findings." You claim the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We also have considered comments submitted by the DOE and by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The district has submitted as responsive a single four-page document you refer to as a "Point Sheet," which you explain was provided to the district by the DOE. You state, "If other responsive documents are identified [as information the district seeks to withhold], they will be submitted to your office; otherwise, documents responsive to this request have been and are being provided to the requestor." As of the date of this letter, you have submitted no

¹We note the requestor provided 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 governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

are being provided to the requestor.” As of the date of this letter, you have submitted no additional information the district seeks to withhold under the Act. Thus, we assume any other responsive information has been released. If not, the district must release it at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

In comments to this office, the first requestor asserts the information the district has submitted as responsive to the instant request was also the subject of his prior request for information, in response to which this office issued Open Records Letter No. 2012-02299 (2012). In the previous ruling, we concluded the information at issue was not excepted from disclosure and must be released to the requestor.

In Open Records Decision No. 673 (2001), this office set out the criteria for determining whether a ruling operated as a “previous determination” under section 552.301(a) of the Government Code. The four criteria for this type of “previous determination” are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* ORD 673. The records at issue in Open Records Letter No. 2012-02299 consisted of information related to the DOE audit of the district that was provided to the DOE by the district and any follow-up correspondence from the district to the DOE. The requestor’s current request seeks communications from the DOE to the district regarding the audit and any documents provided to the DOE by the district since the date of the previous request. Thus, the information at issue in the current request is not “precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code[.]” Therefore, the criteria for a previous determination have not been met, and Open Records Letter No. 2012-02299 does not operate as a previous determination regarding the submitted information. Accordingly, we will consider the submitted arguments.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. In Open Records Decision No. 561, we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we noted the general rule that

section 552 of title 5 of the United States Code, the federal Freedom of Information Act (“FOIA”), applies only to federal agencies and does not apply to records held by state agencies. ORD 561 at 6. Further, we stated that information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded that: “when information in the possession of a federal agency is ‘deemed confidential’ by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law.” *Id.* at 7.

The district and the DOE inform this office that the submitted information was provided to the district by the DOE. The DOE informs this office that it considers the submitted information confidential under the provisions found in sections 552(b)(5) and 552(b)(7)(A) of title 5 of the United States Code. *See* 5 U.S.C. § 552(b)(5), (7)(A). Therefore, we conclude that the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with federal law.²

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

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 456532

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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