



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2012

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

OR2012-08740

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# 455793 (TEA PIR# 17318).

The Texas Education Agency (the "agency") received a request for information related to request for proposals number 701-10-001, erasure data from 2009-2010 and 2010-2011, and a specified audit of a named school district. You state the agency will redact bank account numbers and credit card numbers pursuant to section 552.136(c) of the Government Code and personal e-mail addresses pursuant to Open Records Decision No. 684 (2009).¹ You also state you will withhold a portion of the requested information in reliance upon our prior

¹We note section 552.136(c) of the Government Code authorizes a governmental body to redact from the requested information it discloses, without the necessity of requesting a decision from this office, a credit card, debit card, charge card, or access device number. Gov't Code § 552.136(c) (governmental body may redact information described by subsection 552.136(b) from any information the governmental body discloses without necessity of requesting decision from attorney general); *see id.* § 552.136(d) (entitling requestor to appeal governmental body's decision to withhold information pursuant to section 552.136(c) to attorney general); *id.* § 552.136(e) (requiring governmental body that withholds information pursuant to section 552.136(c) to provide notice to requestor). We further note this office issued Open Records Decision No. 684, a previous determination to all governmental bodies, which authorizes the withholding of personal email addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

rulings in Open Records Letter Nos. 2012-04388 (2012) and 2010-13398 (2010).² You claim that some of the submitted information is excepted from disclosure under section 552.116 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Pearson, PLC (“Pearson”). Accordingly, you have notified Pearson of the request and of its right to submit arguments to this office as to why their information should not be released. *See* Gov’t Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the submitted arguments and reviewed the submitted information, a portion of which is a representative sample.³

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this decision, we have not received correspondence from Pearson. Thus, Pearson has not demonstrated that it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the agency may not withhold the submitted information on the basis of any proprietary interests Pearson may have in the information.

Section 552.116 of the Government Code provides the following:

- (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

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, and ruling concludes that information is or is not excepted from disclosure).

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.

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 the requirements of Section 552.021 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.

Gov’t Code § 552.116. You inform this office the information you have marked consists of “audit working papers prepared or maintained by [the agency’s] Division of Financial Audits in conjunction with an audit of [the named school district].” You inform us the audit was authorized by section 39.057(a)(4) the Education Code, which permits special accreditation investigations to be conducted in response to established compliance reviews of a school district’s financial accounting practices and state and federal program requirements. *See* Educ. Code § 39.057 (listing circumstances in which the commissioner shall authorize investigations). Based on your representations and our review, we agree the information at issue consists of audit working papers for purposes of section 552.116 of the Government Code. Accordingly, the agency may withhold the information at issue under section 552.116 of the Government Code. As no further exceptions are raised, the remaining 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 455793

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Walter Sherwood
Regional Vice President, State Services
Pearson
400 Center Ridge Drive
Austin, Texas 78753
(Third party w/o enclosures)