



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2012

Ms. LeAnn Lundy
Counsel for the Fort Bend ISD
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2012-12355

Dear Ms. Lundy:

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# 461171.

The Fort Bend Independent School District (the "district"), which you represent, received a request for records pertaining to a named individual for the period she was interim principal at a specified school and anytime thereafter, any documentation or communications pertaining to the requestor, and all records from two named individuals in the district's internal audit department pertaining to the requestor regarding the 2011-2012 school year audit. You state the district will make some of the requested information available to the requestor. We note you have redacted student-identifying information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under sections 552.111, 552.116, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹The United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act ("FERPA") does not permit state and local educational authorities to disclose to this office, without parental 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²We 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.

Initially, we note that portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(1), (3). The submitted information contains completed audit reports that are subject to section 552.022(a)(1) and invoices, checks, receipts, and other information that is subject to section 552.022(a)(3) of the Government Code. Although you assert this information is excepted from disclosure under sections 552.111 and 552.116, these sections are discretionary and do not make information confidential under the Act. *See id.* §§ 552.111, .116; Act of May 30, 2011, 82nd Leg., R.S., S.B. 602 §§ 3-21, 23-26, 28-37 (providing for "confidentiality" of information under specified exceptions); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the information subject to section 552.022, which we have marked, under section 552.111 or section 552.116. However, you also raise section 552.136 of the Government Code for this information, which makes information confidential under the Act. Accordingly, we will consider the applicability of section 552.136 to the information subject to section 552.022 of the Government Code. We will also address your arguments for the information not subject to section 552.022.

Section 552.136 of the Government Code states "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). We note check numbers are not access device numbers for purposes of section 552.136. Thus, the district must withhold the bank account, routing, and credit card numbers we have marked under section 552.136 of the Government Code. You have not demonstrated the remaining

information you have marked is confidential under section 552.136 of the Government Code and it may not be withheld on that basis. As you raise no further exceptions, the remaining information subject to section 552.022 must be released. We next address your arguments for the information not subject to section 552.022.

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 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.

Id. § 552.116. You state the information at issue consist of audit working papers that were prepared or maintained by the district in conducting an audit. We understand the audit at issue was conducted by the district's internal auditor as authorized by section 11.170 of the Education Code and the district's board of trustees. *See* Educ. Code § 11.170 (providing district's board of trustees may select an internal auditor who reports directly to the board). Based on your representations and our review, we agree the information at issue consists of audit working papers for purposes of section 552.116. Accordingly, the district may

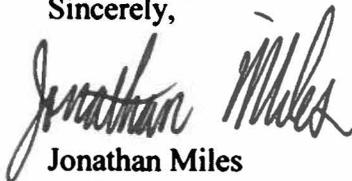
withhold the information not subject to section 552.022 under section 552.116 of the Government Code.³

In summary, with the exception of the bank account, routing, and credit card numbers we have marked, which must be withheld under section 552.136 of the Government Code, the district must release the information we have marked as subject to section 552.022 of the Government Code. The district may withhold the remaining information under section 552.116 of the Government Code.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 461171

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.