



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2012

Ms. MelanieL. Hollmann
Atkins, Hollmann, Jones, Peacock, Lewis & Lyon, P.C.
3800 East 42nd Street, Suite 500
Odessa, Texas 79762

OR2012-13693

Dear Ms. Hollmann:

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# 463442.

The Ector County Independent School District (the "district"), which you represent, received a request for the personnel file of a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.116, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have submitted only a one-page consent form. Thus, to the extent any other information in the named individual's personnel file existed and was maintained by the district on the date the district received the request for information, we presume the district has released it. If not, the district must do so at this time. *See Gov't Code §§ 552.301, .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).*

Next, we note that you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See Gov't Code §§ 552.301(a), .301(e)(1)(D).* We understand the district has redacted some information

subject to section 552.117(a)(1) pursuant to section 552.024 of the Government Code.¹ In addition, the district may redact social security numbers under section 552.147 of the Government Code.² However, you do not assert, nor does our review of our records indicate, that the district is authorized to withhold any of the remaining redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, this type of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information, we will address its public availability. In the future, the district should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code or may be withheld pursuant to statutory authority. *See Gov't Code* §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302.

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

¹Section 552.024 authorizes a governmental body to redact from public release a current or former employee's home address and telephone number, emergency contact information, and social security number excepted from disclosure under section 552.117(a)(1) without the necessity of requesting a decision from this office under the Act, if the employee timely elected to withhold such information. *See Gov't Code* §§ 552.024(a)-(c), .117(a)(1).

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *Gov't Code* § 552.147(b).

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 claim the submitted criminal history background check consent form is excepted from disclosure under section 552.116 because it is information prepared or maintained in conducting an audit relating to the criminal history background check of a public school employee. You also explain the audit was conducted pursuant to the authorization in section 22.083 of the Education Code, which authorizes the district to obtain criminal history record information relating to its employees. *See* Educ. Code § 22.083(a-1). Based on your representations and our review, we conclude the district may withhold the submitted information under section 552.116 as audit working papers. As our ruling is dispositive, we need not address your remaining argument 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, 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 463442

Enc. Submitted documents

c: Requestor
(w/o enclosures)