



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2013

Ms. Jessica Perez Gomez  
Counsel for the Canutillo Independent School District  
Blanco, Ordoñez, Mata, & Wallace, P.C.  
5715 Cromo Drive  
El Paso, Texas 79912

OR2013-03418

Dear Ms. Perez:

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# 480104.

The Canutillo Independent School District (the "district"), which you represent, received two requests from different requestors for information pertaining to a specified audit and the agenda or information presented at a specified council meeting or any other meeting pertaining to certain actions on the part of the district superintendent. You state some of the submitted information has been redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim the requested information is excepted from disclosure under section 552.116 of the Government Code. You also state release of the submitted information may implicate the interests of the Texas Education Agency (the "TEA"). Accordingly, you state you have notified the TEA of these requests for information and its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental 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. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

party may submit comments stating why information should or should not be released). We have received comments from the TEA. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from one of the requestors. *See id.*

Initially, we note the Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988).* The district and one of the requestors state the district previously released Exhibit B1 to members of the press. Although both the district and the TEA now seek to withhold Exhibit B1 under section 552.116 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See Gov't Code § 552.116; see also Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions).* Thus, the district may not withhold Exhibit B1 under section 552.116 of the Government Code. As no other exceptions to disclosure have been raised for Exhibit B1, it must be released to the requestors.

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 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.

Gov't Code § 552.116. You state the remaining information consists of audit working papers prepared or maintained by the district in conducting an audit of the Canutillo High School Newcomer Admission Process. You further explain the district's internal auditor conducted the audits as authorized by section 11.170 of the Education Code and the district's board of trustees. *See* Educ. Code § 11.170 (district's board of trustees may select internal auditor who reports directly to board). Based on your representations and our review, we agree the remaining information consists of audit working papers for purposes of section 552.116. Accordingly, the district may withhold the remaining information under section 552.116 of the Government Code.<sup>2</sup>

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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

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<sup>2</sup>As our ruling on this information is dispositive, we need not address the TEA's arguments against disclosure.

Ref: ID# 480104

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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