



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2013

Mr. W. Montgomery Meitler
Assistant Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2013-04108

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# 481168 (TEA PIR No. 18819).

The Texas Education Agency (the "agency") received a request for five categories of information related to certain policies and procedures, a specified risk assessment, and certain correspondence. You claim the submitted information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you state a portion of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-11936 (2012). In that ruling, we determined the agency may withhold the information it marked under section 552.111 of the Government Code and may withhold the remaining information under section 552.116 of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the agency may rely on Open Records Letter No. 2012-11936 as a previous determination and withhold or release the identical information in accordance with that ruling. *See Open*

¹We assume the "representative sample" of information 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 that those records contain substantially different types of information than that submitted to this office.

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). To the extent the requested information is not encompassed by the prior ruling, we will consider the exception you claim.

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 [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] 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(a), (b)(1)-(2). You state the information you have marked consists of audit working papers that were prepared or are maintained by the agency's Division of Financial Audits in conjunction with audits of multiple grant recipients. You inform us these audits were conducted under the authority granted to the agency by section 7.021(b)(1) of the Education Code, subsections 7.028(a)(1) and (a)(2) of the Education Code, section 76.770

of title 34 of the Code of Federal Regulations and subpart D of Office of Management and Budget Circular A-133. *See* Educ. Code §§ 7.021(b)(1) (agency shall administer and monitor compliance with education programs), .028 (a)(1), (a)(2) (agency may monitor program to ensure compliance with federal law and grant requirements); 34 C.F.R. § 76.770 (state shall perform state determined procedures and evaluations to ensure subgrantee compliance with statutes and regulations). You further inform this office the remaining information consists of “audit working papers prepared or maintained by [the agency’s] Division of Financial Audits in conjunction with an audit of a charter school.” You inform us the audit was authorized by section 39.057(a)(4) of 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 submitted information under section 552.116 of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the agency may rely on Open Records Letter No. 2012-11936 as a previous determination and withhold or release the identical information in accordance with that ruling. The agency may withhold the submitted 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 481168

Enc. Submitted documents

c: Requestor
(w/o enclosures)