



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 13, 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

OR2013-07896

Dear Ms. Gomez:

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# 487031.

The Canutillo Independent School District (the "district"), which you represent, received a request for information pertaining to the requestor's client, including any audit or investigation reports and documentation performed in the area of bilingual education since the requestor's client has worked for the district. You state you have released some of the requested information. 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 remaining information is excepted from disclosure under sections 552.111 and 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 the request 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 party may submit comments stating why information should or should not be released). We have received

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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>.

comments from the TEA. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we must address the district's procedural responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). The district received the request for information on February 19, 2013. Thus, the district was required to request a decision from this office and state the applicable exceptions by March 5, 2013. We note the district did not raise section 552.111 of the Government Code until its brief on March 12, 2013. Thus, the district failed to raise section 552.111 within the applicable deadline. Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Accordingly, the district may not withhold the information submitted in Exhibit B under section 552.111 of the Government Code. Nonetheless, we will consider the district's timely raised exception under section 552.116 of the Government Code as well as TEA's arguments for the information submitted in Exhibit C.

The district and TEA assert Exhibit C is excepted from disclosure under section 552.116 of the Government Code, which provides:

(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 under the Act]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [required 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

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<sup>2</sup>We 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 those records contain substantially different types of information than those submitted to this office.

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

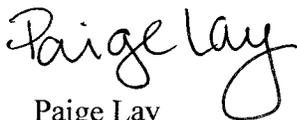
(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state the information at issue consists of audit working papers prepared or maintained by the district in conducting audits 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 that the information at issue constitutes audit working papers that the district may withhold pursuant to section 552.116 of the Government Code.<sup>3</sup> The district must release the remaining information.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division  
PL/bhf

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<sup>3</sup>As our ruling on this information is dispositive, we need not address the TEA'S argument against disclosure.

Ref: ID# 487031

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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(w/o enclosures)