ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 2, 2014

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

OR2014-00130

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# 509772 (TEA PIR# 20649).

The Texas Education Agency (the "agency") received a request for all complaints submitted to the agency concerning Lancaster Independent School District during a specified period of time. You state the agency will release some of the requested information. You state the agency has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code and under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).[1] You claim the submitted information is excepted from disclosure under

[1]The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office 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. Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[2]

Section 552.116 of the Government Code 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]. 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). You state a portion the submitted information consists of "audit working papers prepared or maintained by [the agency's] Division of Financial Compliance in conjunction with audits of Lancaster Independent School District." You inform us the audits at issue are authorized by section 39.057(a)(4) of the Education Code,

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[2]We 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.

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). Additionally, you state the remaining information consists of "audit working papers prepared or maintained by [the agency's] Student Assessment Division Security Task Force in conducting investigations of testing irregularities in the administration of statewide assessment instruments." You inform us the investigations at issue were "authorized by section 39.057(a)(8) of the Education Code, which permits the [c]ommissioner of [e]ducation to authorize special accreditation investigations to be conducted in response to an allegation regarding or an analysis using a statistical method result indicating a possible violation of an assessment instrument security procedure." *See id.* Upon review, we agree section 552.116 is applicable in this instance. Therefore, 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/akg

Ref: ID# 509772

Enc. Submitted documents

c: Requestor
(w/o enclosures)