



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 14, 2014

Mr. W. Montgomery Meitler
Senior Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2014-02900

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# 514186 (TEA PIR No. 20950).

The Texas Education Agency (the "agency") received a request for all complaints submitted against Port Arthur Independent School District during a specified period of time. You state the agency released some of the requested information. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code and e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim some of the submitted information is excepted from disclosure under

¹The 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 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-13763 (2011). In Open Records Letter No. 2011-13763, we concluded the agency may withhold the submitted information pursuant to section 552.116 of the Government Code. You state the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the agency may continue to rely on Open Records Letter No. 2011-13763 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open 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 information is or is not excepted from disclosure). However, we will address your arguments for the information not previously ruled on.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 21.048 of the Education Code, which addresses educator certification examinations. Section 21.048(c-1) provides:

The results of an examination administered under this section are confidential and are not subject to disclosure under [the Act], unless:

- (1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or
- (2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). You state the information you have marked reflects the results of examinations administered under section 21.048 of the Education Code. You state subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Based on your representations and our review, we find the agency must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

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 the information you have indicated 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 these audits are authorized by section 39.057(a)(8) of the Education Code, which permits 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 indicated information under section 552.116 of the Government Code.

In summary, the agency may continue to rely on Open Records Letter No. 2011-13763 as a previous determination and withhold the identical information in accordance with that ruling.

The agency must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The agency may withhold the information you have indicated under section 552.116 of the Government Code. The agency 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.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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

Ref: ID# 514186

Enc. Submitted documents

c: Requestor
(w/o enclosures)