



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 21, 1997

Ms. Angela M. McAllister  
Assistant County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

OR97-0591

Dear Ms. McAllister:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35129.

The Harris County Auditor (the "county auditor") received a request for "audit papers evaluating internal controls and audit papers showing results of tests performed at Justice of the Peace Paul Heath Till for the period 6/1/92-5/31/93." You assert that the county auditor may withhold the requested information from required public disclosure pursuant to sections 552.103, 552.104, 552.108, 552.112, and 552.116 of the Government Code. You have submitted a representative sample of this information to us for review.<sup>1</sup>

We first consider whether you may withhold the requested documents under section 552.116 of the Government Code. Section 552.116 excepts from disclosure "[a]n audit working paper of the *state auditor*." (Emphasis added.) This exception by implication makes audit working papers other than those of the state auditor public, unless covered by some other exception. *See* Open Records Decision No. 211 (1978). Therefore, we conclude that section 552.116 does not protect the county auditor's records submitted in response to this request for information.

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 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.

We next consider the exception you claim under section 552.112(a) of the Government Code. Section 552.112(a) excepts from required public disclosure:

Information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.

The institution under investigation is not a "financial institution" within the meaning of section 552.112(a). See V.T.C.S. art. 1528g (definition of "financial institution" contained in the Business Development Corporation Act). Thus, you may not protect the requested information from public disclosure under section 552.112(a) of the Government Code.

Similarly, the section 552.104 exception is inapplicable to the information at issue. You assert that section 552.104 "provides an analogous exception from disclosure when the information would give a person a financial advantage." Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give an advantage to a competitor or bidder." The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. See Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. See Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. Because you have not demonstrated any potential specific harm to the county auditor's interest in a competitive bidding situation, you may not withhold the requested information under section 552.104 of the Government Code.

We next consider whether you may withhold the requested documents under section 552.108 of the Government Code. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Section 552.108 generally applies to records of a law-enforcement agency or prosecutor. However, in certain circumstances, an agency that is not a law-enforcement agency may claim section 552.108. See Open Records Decision No. 493 (1988). You claim that the techniques used by the county auditor are intended to aid the county's law enforcement efforts by detecting forgeries, embezzlement, and other illegal activities. Section 112.006(b) of the Local Government Code provides that "[t]he county auditor shall see to the strict enforcement of the law governing county finances."

After reviewing the submitted documents, we conclude that you have demonstrated that the release of some of this information would unduly interfere with the county auditor's law enforcement efforts. Cf. *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 679 (Tex. 1995) (disclosure of the choice of audit method and audit group will jeopardize

the comptroller's effectiveness in enforcement of tax laws). We have marked the records that the county auditor may withhold from disclosure under section 552.108 of the Government Code. On the other hand, you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/rho

Ref.: ID# 35129

Enclosures: Marked documents

cc: Mr. Phillip S. Smith  
1307 Heathwick  
Houston, Texas 77043  
(w/o enclosures)

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<sup>2</sup>As you did not explain how section 552.103 of the Government Code applies to the requested information, we do not consider it. See Gov't Code § 552.301(b)(1); Open Records Decision No. 363 (1983).

