



February 22, 2000

Ms. Ruth H. Soucy
Manager, Open Records Division
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2000-0638

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID # 132290.

The Comptroller of Public Accounts (the "comptroller") received a request for a copy of a survey conducted in connection with the comptroller's performance review of the San Antonio Independent School District. You have submitted a copy of the requested information for our review. You claim that it is excepted from disclosure under sections 552.111 and 552.116 of the Government Code. We have considered the exceptions you claim and have reviewed the requested survey and other background information that you submitted. We also have reviewed the letter dated January 14, 2000, that the requestor submitted to this office.

Section 552.116 of the Government Code, as amended by the Seventy-sixth Legislature, provides in relevant part:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, 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 [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 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 inform this office that the comptroller is in the process of performing a Texas School Performance Review of the San Antonio Independent School District. You assert that the pending performance review is an "investigative audit authorized or required by statute" and that the submitted survey information represents an audit working paper, as defined by section 552.116(b)(2), created in connection with the performance review. You state that the review itself will be made public, but contend that the survey information is excepted from public disclosure as an audit working paper under section 552.116.

We initially note that section 403.020 of the Government Code authorizes the comptroller to "periodically review the effectiveness and efficiency of the budgets and operations of school districts" and directs the comptroller to "prepare a report showing the results of each review conducted under this section" and "make the entire report and a summary of the report available to the public on the Internet." Gov't Code § 403.020(a), (c)(1), (3). We also note this office's recognition that the review process which section 403.020(a) appears to contemplate can constitute an "audit" in the governmental sector. *See* Open Records Decision No. 580 (1990). Open Records Decision No. 580 states:

Performance audits include economy and efficiency audits, which look into whether the [audited] entity is using its resources economically and efficiently, and program audits, which consider the extent to which the results established by the legislature are being achieved. Both types of audit determine whether the entity has complied with applicable laws and regulations.

Id. at 6 n.1, *citing* United States General Accounting Office, *Government Auditing Standards* 2-1.¹ Quoting the same source, Open Records Decision No. 580 also notes:

The Glossary appended to *Government Auditing Standards* defines working papers as follows:

¹Similarly, the reference materials that you provided define a "performance audit" as

an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decision-making by parties with responsibility to oversee or initiate corrective action.

Documents containing the evidence to support the auditor's findings, opinions, conclusions, and judgments. They include the collection of evidence, prepared or obtained by the auditor during the audit.

Id. at 5. With regard to performance audits, Open Records Decision No. 580 states:

The standards for performance audits provide as follows:

Sufficient, competent, and relevant evidence is to be obtained to afford a reasonable basis for the auditors' judgments and conclusions regarding the organization, program, activity, or function under audit. A record of the auditors' work is to be retained in the form of working papers.

...

The types of evidence are categorized and described as follows:

...

c. Testimonial evidence: . . . obtained from others through statements received in response to inquiries or through interviews.

d. Analytical evidence: . . . includes computations, comparisons, reasoning, and separation of information into components.

Id. at 6 (internal citations omitted). Having considered these sources, Open Records Decision No. 580 concludes:

We believe that the term 'working papers of the State Auditor' in section 3(a)(16) of the [former] Open Records Act should be read to incorporate the concept of working papers set out in the Government Auditing Standards[.]

Id. at 8.² The concepts discussed in Open Records Decision No. 580 are not inconsistent with the definitions of "audit" and "audit working paper" that were enacted by the Seventy-sixth Legislature in amending section 552.116 of the Government Code. *See* Gov't Code

²In Open Records Decision No. 580, we ultimately concluded that documents created or assembled by the state auditor during the course of an investigation of a state agency represented "audit working papers" that were excepted from disclosure under the predecessor statute to section 552.116 of the Government Code. *See* ORD 580 at 11-12. In the process of doing so, we overruled Open Records Decision No. 164 (1977), which had viewed the concept of "audit working paper" more restrictively. *See* ORD 580 at 4.

§ 552.116(b)(1), (2).³ In light of the discussion of performance audits and audit working papers in Open Records Decision No. 580 and the language of section 552.116(b), we believe that these terms encompass, respectively, a Texas School Performance Review conducted by the comptroller under section 403.020 of the Government Code and information assembled or created by or for the comptroller in the course of a performance review. We therefore conclude that the comptroller's Texas School Performance Review of the San Antonio Independent School District, pursuant to section 403.020(a) of the Government Code, represents an "audit" under section 552.116(b)(1) of the Government Code and that the requested survey information represents an "audit working paper" under section 552.116(b)(2). Consequently, the requested information is "[a]n audit working paper of . . . the auditor of a state agency," Gov't Code § 552.116(a), that is excepted from public disclosure under section 552.116 of the Government Code.

As we are able to make a determination under section 552.116, we do not address your claim under section 552.111. This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

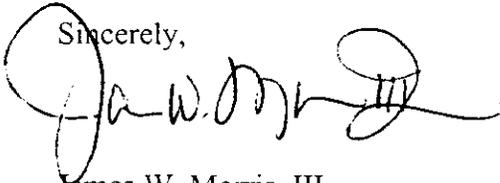
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

³See also Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 8, 1999 Tex. Gen. Laws 4500, 4503 (codified as an amendment to Gov't Code § 552.116).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 132290

Encl. Submitted documents

cc: Mr. Robert Moseley
San Antonio Monitor
P.O. Box 6994
San Antonio, Texas 78209
(w/o enclosures)