



June 18, 2001

Mr. Scott A. Kelly
Deputy General Counsel
The Texas A&M University System
John B. Connally Building, Sixth Floor
301 Tarrow
College Station, Texas 77840-7896

OR2001-2584

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 148503.

The Texas A&M University System (the "system") received a request for information relating to an "allegation of possible impropriety/API # 21089501." You inform us that most of the responsive information will be released to the requestor. You claim that the remaining information, which you have submitted as Exhibits B-1, B-2, and B-3, is excepted from disclosure under sections 552.101, 552.107, and 552.116 of the Government Code. We have considered the exceptions you raise and have reviewed the submitted information.

You assert that the information contained in Exhibits B-1 and B-3 is excepted from disclosure under section 552.116 of the Government Code. This exception provides as follows:

(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 [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 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 note that the request for information was directed to the System Internal Audit Department for The Texas A&M University System. You contend that the documents for which the system claims an exception under section 552.116 are "audit working papers that were prepared and maintained by the System Internal Audit Department for purposes of investigating allegations of impropriety by an employee of a [system] component." You state that "[t]hese documents specifically relate to the investigation at issue." Based on your representations and our review of the documents at issue, we conclude that Exhibits B-1 and B-3 are excepted from disclosure as audit working papers under section 552.116. *See* Gov't Code § 552.116(a), (b)(1); *see also* Open Records Decision No. 580 (1990) (expanding scope of audit working papers under statutory predecessor). We have marked the documents that the system may withhold under section 552.116.

You also claim that information contained in Exhibit B-2 is protected from disclosure under section 552.101 of the Government Code in conjunction with the common law right to privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information is protected from disclosure under section 552.101 in conjunction with common law privacy when (1) the information is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have determined that financial information relating only to an individual ordinarily satisfies the first element of the common law privacy test, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992), 545 at 3-5 (1990), 523 at 3-4 (1989), 373 at 3-4 (1983). We have marked personal financial information in Exhibit B-2 that is excepted from disclosure under section 552.101 in conjunction with common law privacy.

In summary, Exhibits B-1 and B-3 are excepted from disclosure in their entirety under section 552.116 of the Government Code. Personal financial information in Exhibit B-2 is excepted under section 552.101 in conjunction with common law privacy. We have marked the information that the system may withhold under sections 552.116 and 552.101. The rest of the submitted information must be released. As we are able to make these determinations, we need not address your arguments under section 552.107.

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).

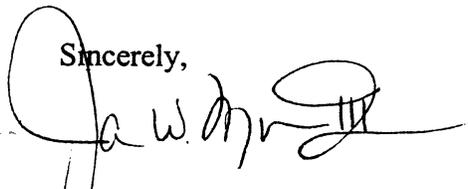
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



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

JWM/sdk

Ref: ID# 148503

Encl. Marked documents

cc: Dr. S. Sefa Koseoglu
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(w/o enclosures)