



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2003

Ms. Peggy D. Rudd
Director and Librarian
Texas State Library and Archives Commission
P.O. Box 12927
Austin, Texas 78711-2927

OR2003-6626

Dear Ms. Rudd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188148.

The Texas State Library and Archives Commission (the "commission") received a request for "all material in the Bush archives related to the Texas Growth Fund, with the exception of any documentation related to appointments to the board." You indicate that some of the requested information is being made available to the requestor. You do not assert that any of the remaining requested information is excepted from disclosure under the Public Information Act, but seek a determination as to whether this information may be excepted from disclosure under sections 552.111 and/or 552.116 of the Government Code. We have considered these exceptions and have reviewed the submitted information.

Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993). An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of

information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; Open Records Decision No. 615 at 4-5. You do not assert, nor does the submitted information reflect, that the information consists of or contains advice, recommendations or opinions reflecting the policymaking processes of the commission. We therefore determine that you may not withhold any portion of the information under section 552.111 of the Government Code.

We now address whether the submitted information is excepted under section 552.116 of the Government Code. In Senate Bill 1581, which became effective on June 27, 2003, the Seventy-eighth Legislature amended section 552.116 of the Government Code. As amended, section 552.116 provides in pertinent part as follows:

(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, or a municipality 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.

Act of May 23, 2003, 78th Leg., R.S., S.B. 1581, § 1 (to be codified as amendment to Gov't Code § 552.116). A governmental body that invokes section 552.116 must demonstrate that the audit working papers are from an audit authorized or required by statute by identifying the applicable statute. You have not asserted that the submitted documents constitute audit working papers, nor have you identified the applicable statute, if any, that authorized or required the audit. Thus, you have not demonstrated that the information at issue was

prepared or maintained by the state auditor or the auditor of a state agency, an institution of higher education, a county, or a municipality in conducting an audit authorized or required by a statute of this state or the United States. *See* Gov't Code §§ 552.116(a), (b)(1), (b)(2). Therefore, none of the information may be withheld under section 552.116 of the Government Code. Consequently, the submitted information must be released.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 that reads "Kristen Bates". The signature is written in a cursive style with a large initial "K".

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 188148

Enc. Submitted documents

c: Mr. Lucius Lomax
823 Church Street, Apt. B
Galveston, TX 77550
(w/o enclosures)