



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2003

Mr. Donald R. Postell
City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053

OR2004-0037

Dear Mr. Postell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192849.

The City of Grand Prairie (the "city") received a request for information related to an audit of the city's accounting division, which is being performed by an outside contractor. You claim that the submitted information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that most of the submitted documents are subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

The submitted documents include a contract and account information relating to the expenditure of public funds. The submitted documents also include working papers and information used to estimate the expenditure of public funds by the city, and the estimate has been completed. This information must be released unless it is confidential under other law. *See Gov't Code § 552.022(a)(3), (5)*. Section 552.116 of the Government Code is not a confidentiality provision. Thus, this information cannot be withheld under section 552.116. As you claim no other exceptions, this information must be released.

We will now address your section 552.116 claim with regards to the remaining information. In Senate Bill 1581, which became effective on June 18, 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 28, 2003, 78th Leg., R.S., ch. 379, § 1, 2003 Tex. Sess. Law Serv. 1604 (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. A statute is defined as a law passed by a legislative body at the federal, state, county, or city level of government. *See BLACK'S LAW DICTIONARY 1420 (7th ed. 1999), BLACK'S LAW DICTIONARY 1410 (6th ed. 1990)*. A municipal charter, which is "a legislative enactment conferring the governmental

powers of the state upon its local agencies,” falls under this definition of a “statute.” *Id.* at 1017.

You indicate that the information at issue constitutes audit working papers. You indicate that the final audit report has been made available to the requestor but that the working papers are excepted under section 552.116. You inform us that the Grand Prairie City Charter (the “charter”) was established under the authority granted by section 5 of article 11 of the Texas Constitution. Tex. Const. art. XI, § 5 (city with more than 5,000 inhabitants may adopt a charter subject to limitations prescribed by the Legislature). You also inform us that the city manager is authorized by section 3(j) of article VIII of the charter to “make such inquiries, investigations, studies and reports as the city manager deems proper or as the city council may request or require concerning the operation or conduct of city departments, personnel or agencies.” In this instance, the audit at issue was initiated by the city under the authority granted by section 3(j) of article VIII of the charter in response to the arrest of the city’s accounting manager by the FBI on theft charges relating to his prior employment in order to determine if the city had incurred any losses. Based on our review of your representations and the information at issue, we find you have sufficiently demonstrated that the remaining information was prepared or maintained by the city’s auditor 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). Accordingly, the city may withhold the information we have marked under section 552.116 of the Government Code.

In summary, the city may withhold the marked document under section 552.116. The remaining 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,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 192849

Enc. Submitted documents

c: Mr. Richard H. Hose
P.O. Box 7102
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(w/o enclosures)