



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 11, 2005

Ms. Carol Longoria
Office of the General Counsel
The University of Texas System
201 W. Seventh Street
Austin, TX 78701-2902

OR2005-02084

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219230.

The University of Texas at San Antonio (the "university") received a request for "any and all final [university] audits over the last 12 months."¹ You state that you will release eleven of the audits to the requestor, but you claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note, and you acknowledge, that a completed audit is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part the following:

- (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:

¹You inform us that the university has reached an agreement with the requestor concerning release of the second category of information sought by the requestor.

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code §552.022(a)(1). The submitted documents consist of a completed internal audit report, which must be released under section 552.022 unless it is expressly made confidential under other law. Section 552.101 is "other law" for purposes of section 552.022; accordingly, we will determine whether the submitted information is protected under this section.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. As part of the Texas Homeland Security Act, the Seventy-eighth Legislature added sections 418.176 through 418.182 to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. You assert, among other things, that the requested information is confidential under section 418.177, which provides as follows:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Gov't Code § 418.177. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the Texas Homeland Security Act must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

After reviewing your arguments and the information at issue, we conclude that the university has adequately explained how the submitted information falls within the scope of section 418.177 of the Government Code, and therefore, this information must be withheld from disclosure under section 552.101 of the Government Code. Because our ruling on this issue is dispositive, we need not consider your remaining arguments.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 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,

A handwritten signature in black ink, appearing to read "Elizabeth A. Stephens". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Elizabeth A. Stephens
Assistant Attorney General
Open Records Division

EAS/krl

Ref: ID#219230

Enc. Submitted documents

c: Mr. Brian Collister
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(w/o enclosures)