



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2005

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2005-04036

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 223860.

The Texas Department of Transportation (the "department") received the following request for information concerning a department audit of the Central Texas Regional Mobility Authority ("CTRMA") and other internal audits conducted by department:

This is a [Public Information Act] request to disclose the results of your audit, including any risk assessment directed at the specific engagement. I would also like to review your audit workpapers, and staffing if not clearly presented in the plan. . . . Please provide a copy of [the department's] general audit plan for the current biennium as well as the status of each element of that plan including all special projects not anticipated in the plan. Please provide the risk assessment that you used to compose the plan. Please identify [regional mobility authority ("RMA")] audit activities [within] the plan and relative to all classes of expenditure by [the department] including its RMA subsidiary expenditures.

You indicate that the information at issue is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the

submitted representative sample of information.¹ We have also considered your response to our letter of May 2, 2005, seeking additional information required for our decision. *See* Gov't Code § 552.303 (providing for attorney general request for submission of additional information attorney general determines is necessary to render decision).

As a preliminary matter, we note the sample documents you have submitted consist of three pages that appear to be working papers from the department's audit of CTRMA. You have not submitted information responsive to the request for the results of the department's audit of CTRMA, nor any information responsive to the risk assessment referenced in the request or the department's staffing for the audit. Furthermore, you have not provided copies or samples of any records concerning the department's general audit plan for the current biennium as referenced in the request. We therefore assume that, to the extent it exists, any information maintained by the department that is responsive to these portions of the request has been released to the requestor. If not, the department must release such information immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that Gov't Code § 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances). With respect to the sample information you have submitted for review, we will address your claim under section 552.116.

Section 552.116 of the Government Code provides 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:

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

- (A) intra-agency and interagency communications; and
- (B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state that the submitted information consists of audit working papers created in the course of an internal audit conducted under the authority of section 201.108 of the Transportation Code. *See* Transp. Code § 201.108 (Texas Transportation Commission shall appoint internal auditor for department); *see also* Gov't Code § 2102.005 (requiring state agency to conduct internal audit program). Based on your representations and our review, we agree that section 552.116 of the Government Code is applicable to the submitted information. We therefore conclude that the department may withhold the submitted information pursuant to section 552.116 of the Government Code.

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).

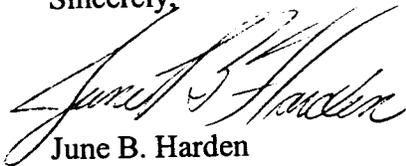
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/DRS/seg

Ref: ID# 223860

Enc: Submitted documents

c: Mr. Richard Viktorin
2005 Exposition Boulevard
Austin, Texas 78703
(w/o enclosures)