



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2005

Mr. Royce Pabst Poinsett
General Counsel to the Speaker
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

OR2005-09450

Dear Mr. Poinsett:

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# 234801.

The Office of the Speaker of the House of Representatives received a request for information, including a draft audit, relating to an ongoing audit of the Texas Comptroller of Public Accounts in the past 12 months. You have submitted information that you claim is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

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, a municipality, or a joint board operating under Section 22.074, Transportation 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, the charter or an ordinance of a

municipality, an order of the commissioners court of a county, or a resolution or other action of a joint board described by Subsection (a) 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 § 552.116.¹ You assert that the submitted information consists of an audit working paper. You inform us that this information relates to an audit authorized to be conducted by the state auditor under section 321.0138 of the Government Code. *See id.* § 321.0138 (review of state tax settlements and other decisions); *see also id.* §§ 321.001, .002. After reviewing the submitted information, we conclude that the information consists of audit working papers of the state auditor for purposes of section 552.116 of the Government Code. Thus, based on your representations and our review of the information at issue, we conclude that you may withhold the submitted information under section 552.116. *See id.* § 321.0138(d) (review by state auditor under Gov't Code § 321.0138 is considered audit for purposes of application of Gov't Code § 552.116).

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

¹As amended by Act of May 17, 2005, 79th Leg., R.S., ch. 202, § 1, 2005 Tex. Sess. Law Serv. (Vernon).

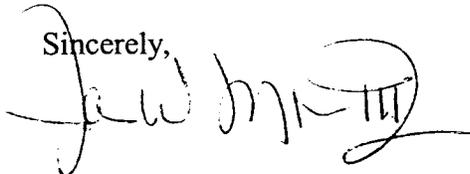
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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 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 Office of the Attorney General 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 "James W. Morris, III". The signature is fluid and cursive, with a large, stylized "J" and "M".

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

JWM/sdk

Ref: ID# 234801

Enc: Submitted documents

c: Ms. Polly Ross Hughes
Houston Chronicle - Austin Bureau
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(w/o enclosures)