



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2006

Ms. Anne M. Constantine
Legal Counsel
Dallas/ Fort Worth International Airport
P. O. Box 619428
DFW Airport, Texas 75261-9428

OR2006-00600

Dear Ms. Constantine:

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# 240530.

The Dallas-Fort Worth International Airport Board (the "board") received a request for a copy of a specified audit report. You state that you have provided the requestor with a portion of the requested information. We understand you to claim that the submitted information is excepted from disclosure under section 552.125 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

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

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

¹Although you raise section 552.101 of the Government Code in conjunction with article 4447cc of Vernon's Texas Civil Statutes, we note that section 552.101 does not encompass discovery privileges. See Open Records Decision 647 at 2 (1996). We also note that article 4447cc is incorporated into the Act by section 552.125 of the Government Code.

Gov't Code § 552.022(a)(1). The information at issue, "Audit of Compliance with Selected Provisions of the Resource Conservation and Recovery Act (RCRA) – Used oil," is a completed report. Thus, the board must release the requested information, unless the information is expressly confidential under other law or is excepted from disclosure by section 552.108. *See id.* § 552.022(a)(1). You do not raise section 552.108. You do, however, indicate that the report is excepted from disclosure under sections 552.101 and 552.125 of the Government Code.

Section 552.125 of the Government Code excepts from disclosure "[a]ny documents or information privileged under the Texas Environmental, Health, and Safety Audit Privilege Act" (the "EHSAP"). The stated purpose of the EHSAP, article 4447cc of Vernon's Texas Civil Statutes, "is to encourage voluntary compliance with environmental and occupational health and safety laws." V.T.C.S. art. 4447cc, § 2. In furtherance of its stated purpose, the EHSAP provides that environmental or health and safety audits voluntarily performed by or for the owner or operator of a facility that is regulated under an environmental or health and safety law are privileged. V.T.C.S. art. 4447cc, §§ 3, 5, 6. Section 5 of the EHSAP provides in part:

(a) An audit report is privileged as provided in this section.

(b) Except as provided in Sections 6, 7, and 8 of this Act, any part of an audit report is privileged and is not admissible as evidence or subject to discovery.

....

V.T.C.S. art. 4447cc, § 5. The Texas Supreme Court has determined that the discovery privileges found in the Texas Rules of Civil Procedure and the Texas Rules of Evidence "are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, article 4447cc of Vernon's Texas Civil Statutes is not such a privilege. Thus, we determine that article 4447cc, as incorporated into the Act by section 552.125, is not "other law" under which information is made confidential, and therefore, the audit report at issue may not be withheld from disclosure pursuant to article 4447cc of Vernon's Texas Civil Statutes and section 552.125 of the Government Code. Therefore, the submitted completed report must be released in its entirety.

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 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,



Brian J. Rogers
Assistant Attorney General
Open Records Division

BJR/krl

Ref: ID# 240530

Enc. Submitted documents

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(w/o enclosures)