



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2006

Ms. Pamela Smith
Senior Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2006-08672

Dear Ms. Smith:

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# 255610.

The Department of Public Safety (the "department") received a request for the audits and related notes pertaining to the Plano driver's license office "dating from January 2000 until January of 2006," "[c]opies of any and all monthly transaction reports dating back from January 2000 until August 2001," and "[a] copy of the April 2003 monthly fee audit reports." You state that the department has no information responsive to the request for transaction reports or the April 2003 monthly fee audit reports.¹ You also state that the department will release the requested completed audit reports but claim that the submitted audit notes are excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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. 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. The department explains the audits were conducted pursuant to section 411.243 of the Government Code. Section 411.243 provides that the department's office of audit and inspection shall inspect all department divisions to ensure that operations are conducted in compliance with established procedures and make recommendations for improvements in operational performance. *Id.* § 411.243(a)(1); *see also id.* § 411.241(1) (office shall inspect and audit departmental programs and operations for compliance with established procedures and develop recommendations for improvement). In addition, the department informs us the submitted information consists of worksheets "generated by the internal auditor as well as other documents compiled and reviewed by the auditor in order to prepare an audit report." After reviewing the department's arguments and the submitted information, we agree the submitted information consists of audit working papers excepted from disclosure under section 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 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/dh

Ref: ID# 255610

Enc. Submitted documents

c: Mr. Jerry Daniels
6316 Lake Worth Boulevard
Lake Worth, Texas 76135
(w/o enclosures)