ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2006

Ms. Margo M. Kaiser
Staff Attorney
Open Records Unit
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2006-12351

Dear Ms. Kaiser:

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# 262337.

The Texas Workforce Commission (the "commission") received a request for information pertaining to the audit of the requestor's company. You state that some of the requested information will be released. You claim that the submitted information is excepted from disclosure under sections 552.111 and 552.116 of the Government Code. We have considered the exceptions 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 Section 61.003, Education Code, a county, a municipality, or a joint board operating under Section 22.074, Transportation Code, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.
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> (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.
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> (2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:
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> (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 commission is specifically authorized to employ an auditor or other person to determine the amount of a contribution due and prepare a report of tax due from an employer. *See* Tex. Labor Code § 213.055. Further, you state that the information at issue is maintained as part of an audit of the employer's account and the report will be released when it is final. Based on your arguments and our review, we agree that submitted information constitutes audit working papers under section 552.116, and it may be withheld on that basis.[1]

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

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[1] Because our ruling is dispositive, we need not address your remaining argument against disclosure.

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,

Tamara L. Harswick

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 262337

Enc. Submitted documents

c: Mr. Dennis J. Bowles, Sr.
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(w/o enclosures)