



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2007

Mr. John A. Kazen
Kazen, Meurer & Pérez, L.L.P.
P.O. Box 6237
Laredo, Texas 78042-6237

OR2007-04030

Dear Mr. Kazen:

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# 275848.

The Laredo Independent School District (the "district"), which you represent, received a request for a copy of an audit performed by the Texas Education Agency (the "agency") of a specified district RFP. You claim that the requested information is 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 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. You contend that the submitted information, which consists of the agency's preliminary investigative report, constitutes audit working papers prepared or maintained as part of an investigation of the district by the agency. We note, however, that section 552.116 is intended to protect the auditor's interests. In this instance, the auditor is the agency. *See id.* Here, the information at issue is maintained by the district, the auditee. As the auditee, the district cannot assert section 552.116 in order to protect its own interest in withholding the information. Accordingly, section 552.116 is inapplicable and does not protect the submitted information from disclosure. As the district raises no further exceptions to disclosure, and the submitted information is not otherwise confidential by law, it must be released to the requestor.

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/eeg

Ref: ID# 275848

Enc. Submitted documents

c: Mr. Rob Stine
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(w/o enclosures)