



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2007

Ms. Jennifer McClure
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2007-06257

Dear Ms. McClure:

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# 279147.

The Denton County Clerk (the "clerk") received a request for all original indices that exist on paper media and CDs that contain digital images of county records. You state that paper records will be made available to the requestor. You contend that the requested CDs are not subject to the Act. You also claim that the CDs are excepted from disclosure under section 552.116 of the Government Code. We have considered your arguments and have reviewed the information you submitted.¹ We note that the requestor also seeks work space for scanning and digital copying. This ruling does not consider that aspect of the request, which is being addressed by another unit of this office.

We begin with your contention that the requested CDs are not subject to the Act. Section 552.002 of the Government Code defines "public information" for the purposes of the Act. Section 552.002 provides that "public information" consists of

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the clerk to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a).² Thus, virtually all of the information that is in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also is applicable to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see also* Open Records Decision No. 462 at 4 (1987).

Based on a provision of section 201.003 of the Local Government Code, you contend that the CDs are not subject to the Act. Section 201.003 is part of the Local Government Records Act, subtitle C of title 6 of the Local Government Code. *See* Local Gov't Code § 201.001. Section 201.003(8) provides that the term "local government record" does not include "extra identical copies of documents created only for convenience of reference or research by officers or employees of the local government[.]" *Id.* § 201.003(8)(A). You inform us that the CDs "are purely for quality control and are part of [a] records recreation project currently being conducted by the [clerk's] office." You explain that

[t]he real property records prior to 1974 are maintained in either paper or microfilm form. [The clerk's] office is currently converting the information to electronic format, but the process is not complete. The vendor for this project still has to complete indexing and fix any errors found during the quality control check. Once the quality control process is complete and [the] indexing and linking process has been complete[d], the data will be certified. The [clerk] cannot certify that the data on these "test" CDs is a true and complete copy of the public record[.]

You maintain that "[i]t can be argued that these CDs are not yet 'records' within the meaning of the Public Information Act." You assert that "[t]hese CDs constitute a work in progress

²You also raise section 552.022 of the Government Code, which is not relevant to the question of whether information is subject to the Act. Instead, section 552.022(a) provides for the required public disclosure of 18 specified categories of information, unless the information is expressly confidential under other law or, in the case of section 552.022(a)(1), excepted from disclosure under section 552.108 of the Government Code. *See* Gov't Code § 552.022(a)(1)-(18). We note that section 552.022(a) is not applicable to the submitted information.

and are not as of yet part of the official public record.” You contend that section 201.003(8)(A) “would seem to indicate that a copy of documents in CD form for the [clerk’s] office to research in order to verify information is not a ‘local government record’ subject to the Public Information Act.”

We disagree. “[T]he Act is intended to apply to all records kept by governmental bodies[.]” *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976); *see also* Gov’t Code § 552.001(a). The definition of “local government record” found at section 201.003(8) of the Local Government Records Act does not affect the scope of the Act. As this office explained in Attorney General Opinion JM-1250 at 1 (1990), the purpose of the Local Government Records Act is “to establish uniform procedures on the maintenance, preservation, and disposition of local government records and to clarify and expand the authority of the Texas State Library and Archives Commission . . . regarding them.” *Id.* at 1; *see also* Open Records Decision No. 607 at 2-3 (1992). Thus, although section 201.009(a) of the Local Government Code provides that “local government records are subject to Chapter 552, Government Code,” the fact that information falls *outside* the definition of “local government record” found at section 201.003(8) of the Local Government Code does not preclude a finding that such information still constitutes “public information” for the purposes of the Act. *See* Local Gov’t Code §§ 201.002 (stating purpose of Local Government Records Act), 202.002(b) (local government record subject to request under Act may not be destroyed until request is resolved).

With regard to the clerk’s other concerns, we note that information is not excluded from the scope of the Act simply because the information was created for quality-control purposes or may not be totally accurate. *See* Open Records Decision Nos. 633 at 3 (1995) (information not removed from scope of Act merely because governmental body has copied information into another record, either in same language or in compiled, edited, summarized, improved, or otherwise altered form), 225 at 4 (1979) (minutes of meetings are public in whatever form they exist). We also note that a governmental body is not responsible for the accuracy of information that it releases to the public or for the use that may be made of the information. *See* Gov’t Code § 552.204; Open Records Decision No. 508 at 3 (1988) (use that may be made of information does not control whether it falls within exception to disclosure). Therefore, having considered your arguments, we find that the CDs are public information and must be released, unless they contain information that falls within an exception to disclosure.

You claim that the CDs are excepted from disclosure under section 552.116 of the Government Code. Section 552.116 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 [required 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 argue that section 552.116 is applicable in this instance because "[t]he CDs in the restoration project are being 'audited' by the [clerk's] office to ensure that they are accurate." You contend that "the [clerk] should be allowed to complete the process and audit the information for accuracy before the public has access to the CDs." You point out that section 15.005 of the Property Code authorizes the clerk to "convert into electronic form information recorded before the county clerk began to record electronic documents[.]" Prop. Code § 15.005(b)(4). You have not demonstrated, however, that section 15.005 either authorizes or requires the clerk to conduct an audit for the purposes of section 552.116 of the Government Code. *See* Gov't Code § 552.116(a), (b)(1); *see also* Open Records Decision No. 580 (1990) (addressing statutory predecessor to Gov't Code § 552.116). Thus, having considered your arguments, we find that you have not demonstrated that the CDs constitute audit working papers for the purposes of section 552.116, and we therefore conclude that the clerk may not withhold the CDs under section 552.116 of the Government Code. As the clerk claims no other exception to disclosure, the CDs must be released.

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).

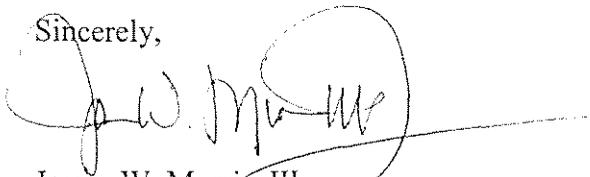
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", is written over a circular stamp. A horizontal line extends from the right side of the signature.

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

JWM/ma

Ref: ID# 279147

Enc: Submitted information

c: Mr. Don B. "Brad" Estill
Texas Records Inc.
P.O. Box 51501
Midland, Texas 79710
(w/o enclosures)