



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 25, 2007

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
1500 Marilla Street  
Dallas, Texas 75201

OR2007-07995

Dear Mr. Toscano:

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# 281869.

The City of Dallas (the "city") received a request for documents submitted by Greenville, L.L.C. d/b/a Suede Bar & Grill ("Suede") in response to the city's audit notice made pursuant to Dallas City Code 51A-1.104. You state that the city will release some of the requested information but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. You also note that release of the submitted information may implicate the proprietary interests of Suede. Accordingly, you have notified Suede of the request and its opportunity to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered all submitted arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You claim that the submitted information is 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 the requirements of Section 552.021 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.

*Id.* § 552.116. You state that the submitted information consists of information prepared or maintained by the city auditor (the "auditor") in conducting an audit pursuant to chapter IX, section 3(2) of the Dallas City Charter and City Council Resolution Nos. 79-0723, 90-4027, and 07-1041. You explain that the auditor is appointed by the city council and is responsible for conducting audits to determine the extent of compliance with applicable laws and regulations and with established policies, plans, and procedures. You state that the information at issue consists of audit working papers of the auditor. You further state that the audit has not been completed. Based on your arguments and our review, we agree that the submitted information constitutes audit working papers that may be withheld under section 552.116.<sup>1</sup>

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

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<sup>1</sup>As our ruling on this issue is dispositive, we do not reach the remaining arguments.

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# 281869

Enc. Submitted documents

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P.O. Box 721376  
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(w/o enclosures)

Mr. Roger Albright  
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(w/o enclosures)