



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2007

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2007-10491

Dear Ms. Soucy:

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# 286537.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for the audit plans prepared by the comptroller for two specified taxpayers for specified time periods.¹ 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, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a

¹You inform us that the requestor verbally modified his request for information. *See* Gov't Code § 522.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

public school employee, 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, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, 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 § 552.116.² You state that the information at issue consists of internal audit working papers created by agency personnel in the course of a tax audit conducted under the authority of section 111.004 of the Tax Code. *See* Tax Code § 111.004 (regarding comptroller's authority to examine records and persons for purpose of carrying out state taxation). Based on your representations and our review, we agree that section 552.116 of the Government Code is applicable to the submitted information. We therefore conclude the comptroller may withhold the submitted information pursuant to section 552.116 of the Government Code.

You also ask this office to issue a previous determination that would permit the comptroller to withhold audit working papers created or maintained during the course of a tax audit conducted under the authority of section 111.004 of the Tax Code from the public on the basis of section 552.116 without the necessity of again requesting an attorney general decision under the Act. After due consideration, we have decided to grant your request. Therefore, this ruling shall serve as a previous determination under section 552.301(a) of the Government Code that the comptroller may withhold audit working papers created during

²Act of May 28, 2007, 80th Leg., R.S., S.B. 9, §§ 24, 25 (to be codified as an amendment to Gov't Code § 552.116).

the course of an audit conducted under the authority of section 111.004 of the Tax Code under section 552.116 of the Government Code. Thus, so long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above and unless otherwise authorized to release according to law, the comptroller need not ask for a decision from this office again with respect to this type of information requested of the comptroller under Chapter 552 of the Government Code. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001).

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 that reads "Paige Savoie". The signature is written in a cursive, flowing style.

Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 286537

Enc. Submitted documents

c: Mr. Jack Conrad
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(w/o enclosures)