



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 8, 2008

Ms. Angela H. Robinson, J.D.
Law, Snakard & Gambill
1600 West Seventh Street, Suite 500
Fort Worth, Texas 76102

OR2008-04679

Dear Ms. Robinson:

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# 306737.

The Tarrant County College District (the "district"), which you represent, received a request for documents concerning a lawsuit against the district, including any claim files. You contend that the request for information is in the impermissible format of questions rather than a request for documents, and therefore the district is not required to respond. You further claim that the requested information is not subject to the Act, and alternatively that it is excepted from disclosure under sections 552.103, 552.107, and 552.116 of the Government Code.¹ We have considered the exceptions that you claim and reviewed the submitted information.

Initially, you assert that the request asks questions rather than requesting documents. You also state that the district does not possess a "claim file" responsive to the request.² We agree that the Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. However, the

¹You claim that the information at issue is protected under the attorney-client privilege based on Texas Rule of Evidence 503 and the attorney work product privilege under Texas Rule of Civil Procedure 192.5. In this instance, however, because the information at issue is not subject to section 552.022 of the Government Code, the information is properly addressed here under section 552.107, rather than rule 503, and section 552.111, rather than rule 192.5. Open Records Decision 676 at 3; *see also* Gov't Code § 552.022 (listing categories of information that are expressly public under the Act and must be released unless confidential under "other law").

²The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the city. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Act does require a governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). In this instance, we find that the requestor's request was sufficiently specific to enable the district to identify any responsive information that is within the district's possession or control. *See* Open Records Decision No. 483 at 2 (1987) (stating that the Act requires no particular request form or "magic words"). Further, we note the district has made a good faith effort to relate the request to information in its possession by submitting responsive information. Accordingly, we will consider your arguments with regard to the information you have submitted as Exhibit 3.

Next, you contend that the requested information does not constitute public information under section 552.002 of the Government Code. Section 552.021 of the Government Code provides for public access to "public information." *See* Gov't Code § 552.021. Section 552.002(a) defines "public information" as:

[I]nformation 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.

Id. § 552.002(a). Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. *See* Open Records Decision No. 635 (1995). Section 552.002 does not require that the information be created by the governmental body. In this instance, the submitted information was used for purposes of preparing the district's annual financial report, and thus, we find it was collected or maintained in connection with the transaction of official business of the district. Accordingly, we conclude that the submitted information is public information as defined by section 552.002.

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, including any audit relating to the criminal history background check of a 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.

Government Code § 552.116. You state that "Exhibit 3 is a copy of the privileged audit working paper used in preparing the audit report." Upon review of the submitted information, we understand that the information was provided to and used by the district's auditors for purposes of assisting the auditors in conducting an examination of the district as required each fiscal year under state law. *See* Educ. Code § 51.005; 19 T.A.C. § 13.62(c); *see also* 31 U.S.C. § 7502(a)(1)(A). Accordingly, based on your arguments and our review of the submitted information, we agree that the requested information constitutes audit working papers, and thus may be withheld under section 552.116 of the Government Code.³

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

³As our ruling is dispositive, we need not address your additional arguments against disclosure.

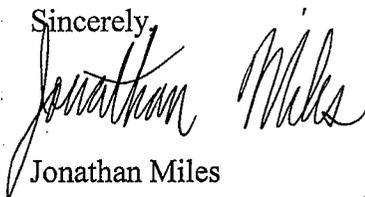
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 306737

Enc. Submitted documents

c: Mr. Bob Mhoon
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(w/o enclosures)