



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2009

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2009-03739

Dear Mr. Smith:

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# 337790.

The Texas Health and Human Services Commission (the "commission") received a request for all releasable personnel records of a named individual, including all documents related to the named individual's job performance and specified formal counseling sessions. You state you have released most of the requested information. You claim the submitted information is not responsive to the request. In the alternative, you claim the submitted information is excepted from disclosure under section 552.116 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your assertion that the submitted information is not personnel records, and thus, is not responsive to the request. We note, the request seeks all documents related to the named individual's job performance. You state the submitted documents "evaluated [the named individual's] job performance while he was working on a particular audit." We note a governmental body must make a good-faith effort to relate a request for information to responsive information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Upon review, we conclude the submitted information is responsive to the request. Thus, we will address the commission's argument against the disclosure of this information.

Section 552.116 of the Government Code provides:

(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 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. You state the submitted information consists of interagency communications created during the course of an internal audit. You state the commission is authorized to create an internal audit division pursuant to chapter 531 of the Government Code. Section 531.008(c)(5) states "the executive commissioner [of the Health and Human Services Commission] shall establish an internal audit division to conduct a program of internal auditing in accordance with chapter 2102 of the Government Code." See Gov't Code § 531.008(c)(5). You indicate the audit at issue was conducted in accordance with chapter 2102 of the Government Code. Upon review, we find you have demonstrated the submitted information is audit working papers for the purposes of section 552.116 of the Government Code. Accordingly, the commission may withhold the submitted information under section 552.116.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 337790

Enc. Submitted documents

c: Requestor
(w/o enclosures)