



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 28, 2009

Mr. Robert H. Lloyd  
Lloyd Gosslink Attorneys at Law  
816 Congress Avenue, Suite 100  
Austin, Texas 78701

OR2009-10415

Dear Mr. Lloyd:

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# 350337.

The Kempner Water Supply Corporation (the "corporation"), which you represent, received two requests for information related to the corporation's 2007 and 2008 financial statements and a specified audit. You state the corporation has made some of the requested information available to the requestor. You assert the remaining requested information, which consists of audit working papers, is not subject to the Act. In the alternative, you claim that the remaining requested information is excepted from disclosure under section 552.116 of the Government Code. We have considered your arguments and reviewed the submitted information.<sup>1</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address your argument that the remaining requested information is not subject to the Act. Section 552.002 of the Government Code defines public information as

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

“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.” *See id.* § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information and it relates to the transaction of official business. *See* Open Records Decision Nos. 462 (1987), 445 (1986); *cf.* Open Records Decision No. 499 (1988):

In Open Records Decision No. 445 (1986), this office addressed whether notes and information acquired by an outside consultant in preparation of a report were “public information” for purposes of the Act. In that open records decision, the consultant contracted with the governmental body to provide a comprehensive written report to the governmental body. *Id.* However, the contract did not provide the governmental body access to notes and information acquired by the consultant in preparation of the report. *Id.* Furthermore, the governmental body indicated that it did not possess the information and did not know the contents of the information. *Id.* This office held that the notes and information acquired by the consultant in preparation of the report were not “public information” for purposes of the Act, and thus not required to be disclosed. *Id.*

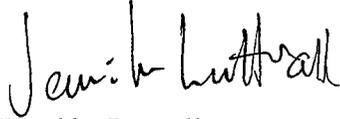
You state that the information at issue, consisting of the audit working papers of a third-party Certified Public Accountant (“CPA”), was used to conduct an audit for the corporation. You argue that the working papers are not subject to the Act because they are not owned or maintained by the corporation and that the corporation does not have a right of access to this information. We note the signed engagement letter between the corporation and the third-party CPA, which you have submitted, states that the audit working papers are confidential and the sole property of the third-party CPA. Further, the engagement letter does not provide the corporation with a right of access to the audit working papers. Upon review of your arguments and the submitted documents, we find that the audit working papers of the third-party CPA are not “public information” under the Act, and the corporation is not required to produce these records in response to the request for information. Gov’t Code § 552.002; *see* ORD 445. As we are able to make this determination, we need not address your argument against disclosure.

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](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,

A handwritten signature in cursive script that reads "Jennifer Luttrall".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/cc

Ref: ID# 350337

Enc. Submitted documents

c: Requestor  
(w/o enclosures)