



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2009

Ms. Thao La
Assistant District Attorney
Civil Division
Dallas County
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2009-11598

Dear Ms. La:

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# 353340.

The Southwestern Institute of Forensic Science ("SWIFS") received a request for the following:

1. Employment Record for Christopher J. Nulf, Ph.D.;
2. American Society of Crime Laboratory Directors - Laboratory Accreditation Board ("ASCLD-LAB") Inspection Report for 2003;
3. ASCLD-LAB Inspection Report for 2008;
4. All Annual Internal Reviews/Audits and External Audits for the Serology and DNA labs from 2001-2009;
5. All Annual ASCLD-LAB Accreditation Reports from 2003-2009;
6. All Annual Quality System Reviews from 2001-2009; and
7. All Corrective Action Request ("CAR") forms from 2001-2009.

You state SWIFS is releasing the responsive personnel records. You claim the remaining information is excepted from disclosure under sections 552.111 and 552.116 of the

Government Code. We have considered the exceptions you claim and reviewed the submitted sample records.¹

Initially, we note most of the submitted records are subject to section 552.022 of the Government Code. Section 552.022 makes certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. One such category of expressly public information under section 552.022 is a completed report, audit, evaluation, or investigation made of, for, or by a governmental body. *See* Gov't Code § 552.022(a)(1). The records responsive to categories 2 through 4 are completed audit reports. Because these records are subject to section 552.022(a)(1), they may only be withheld if excepted under section 552.108 or confidential under "other law." *Id.* You seek to withhold these records under sections 552.111 and 552.116 which are discretionary exceptions that do not make information confidential. *See* Open Records Decision No. 665 at 2 n.5 (2000) (addressing distinction between mandatory and discretionary exceptions to disclosure). Accordingly, the records responsive to categories 2 through 4 must be released.

You claim the records responsive to categories 5 through 7 may be withheld 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, 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.

¹We assume the sample records submitted to this office are 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.

(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 explain that in compliance with state statutes, SWIFS must have a certificate of accreditation from the Texas Department of Public Safety ("DPS"). *See id.* § 411.0205(b) (requiring DPS to establish accreditation process for entities conducting forensic analyses of physical evidence for use in criminal proceedings); *see also* Crim. Proc. Code art. 38.35(d) (stating forensic analysis is not admissible in criminal case if at time of analysis entity conducting analysis was not accredited by DPS in accordance with Gov't Code § 411.0205). You further explain DPS will only issue a certificate of accreditation if SWIFS passes an audit conducted by an approved accrediting agency like ASCLD-LAB. You state the remaining documents were prepared or maintained by SWIFS for these mandatory ASCLD-LAB audits. The purpose of section 552.116, however, is to protect the interests of the auditor, not the auditee. Here, ASCLD-LAB is the auditor, and the information at issue is maintained by SWIFS, the auditee. As the auditee, SWIFS may not assert section 552.116 to protect its own interests in withholding information from disclosure. Accordingly, none of the remaining records may be withheld under section 552.116.

You also claim the remaining records are excepted under section 552.111 of the Government Code. Section 552.111 excepts from public disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. The purpose of this exception is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (stating that Gov't Code § 552.111 is not applicable to personnel-related communications that did not involve policymaking). Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. If, however, the factual information is so inextricably

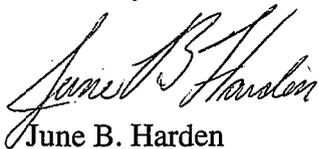
intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information may also be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

You assert the remaining records reflect the advice, opinions, and recommendations of employees of SWIFS regarding changes and improvements to the procedures and policies of its forensic laboratory analysis program. Upon review, we agree a small portion reveals advice, opinions, and recommendations of employees of SWIFS on policy matters. Accordingly, SWIFS may withhold this information under section 552.111. The remainder, however, pertains to personnel matters or is factual information that is not excepted under section 552.111 and must be released.

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/sdk

Ref: ID# 353340

Enc. Submitted documents

c: Requestor
(w/o enclosures)