



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 12, 2013

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

OR2013-02464

Dear Ms. Alexander:

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# 478979.

The Texas Department of Transportation (the "department") received two requests from the same requestor for specified procedures, manuals, vendor performance documents, and invoices; information regarding specified investigations and audits; the calendars of two named employees for a specified period of time; e-mails between the requestor and a named employee during a specified time period; and documents regarding complaints about the conflict of interest between the requestor, a named individual, and two named companies. You state you are releasing some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-16671 (2012). In Open Records Letter No. 2012-16671, we determined that the department may withhold certain information under section 552.107(1) and section 552.116 of the Government Code. We have no indication that the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

in the current request is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter No. 2012-16671 as a previous determination and withhold the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not subject to Open Records Letter No. 2012-16671, we will address your argument against disclosure.

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, a hospital 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 [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [required public disclosure] 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, the bylaws adopted by or other action of the governing body of a hospital district, 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.

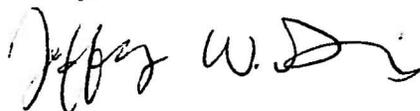
Gov't Code § 552.116. You contend that Exhibit B consists of audit working papers that were compiled by the department's internal auditor during the course of an audit authorized under chapter 321 of the Government Code. *See* Transp. Code § 201.108 (Texas Transportation Commission shall appoint internal auditor for department); *see also* Gov't Code §§ 321.0131-.0134 (defining various types of audits), .0136, 2102.007 (relating to duties of the internal auditor). Based on your representations and our review, we agree that the information at issue constitutes audit working papers under section 552.116. Accordingly, the department may withhold Exhibit B under section 552.116 of the Government Code.

In summary, to the extent the information responsive to the current request is identical to the information previously requested and ruled upon by this office, the department may continue to rely on Open Records Letter No. 2012-16671 as a previous determination and withhold the information at issue in accordance with that ruling. The department may withhold Exhibit B under section 552.116 of the Government Code.

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, toll free at (888) 672-6787.

Sincerely,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 478979

Enc. Submitted documents

c: Requestor  
(w/o enclosures)