



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2015

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

OR2015-08620

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# 562173.

The Texas Health and Human Services Commission (the "commission") received a request for the work plans described in a certain contract and related to an audit of the EHR Incentive Program.¹ 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 information.

Initially, we note the requestor contends the commission failed to meet the procedural requirements of section 552.301 of the Government Code. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit, among other things, written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld to this office within fifteen business days of receiving an open records request. *Id.* § 552.301(e)(1). The commission received the

¹You state the commission sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

clarified request for information on February 9, 2015. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. We note February 16, 2015, and March 2, 2015, were state holidays. Accordingly, the commission was required to provide the information required by section 552.301(b) by February 24, 2015, and the information required by section 552.301(e) by March 4, 2015. The commission stated the exceptions that apply on February 24, 2015, and submitted comments explaining why these exceptions apply on March 4, 2015. Accordingly, we conclude the commission complied with the procedural requirements mandated by section 552.301(b) and section 552.301(e) of the Government Code.

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, 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 board 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

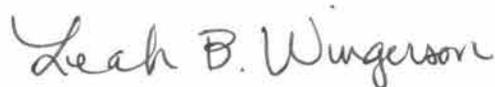
(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You assert the submitted proposed audit work plans made during program years 2011 and 2012 constitute audit working papers because they pertain to an administrative review. You state the commission believes "the administrative review is a necessary extension that flows from audits required by the [c]ommission's Office of Inspector General." However, you have not informed this office of the statutory authority for such audits. You also contend "to the extent any responsive documents [were] generated from the single-audit requirements of title 1, section 378.424 of the Texas Administrative Code," the submitted information is excepted under section 552.116. We note, however, the commission's records and personnel associated with or engaged in the administration of a nutrition program transferred to the Texas Department of Agriculture (the "department"), and the rules the commission adopted, such as section 378.424 of title 1 of the Texas Administrative Code, were also transferred to the department and renumbered in 2007 pursuant to House Bill 4062. Act of May 27, 2007, 80th Leg., R.S., ch. 963, § 12, 2007 Tex. Gen. Laws 3365, 3368. The department then repealed the renumbered rule in 2011. See 36 Tex. Reg. 37 (2011). Upon review, we find you have not demonstrated how the submitted information was prepared or is maintained in relation to an audit authorized or required by any of the laws or authorities specified in section 552.116(b)(1). Consequently, the commission may not withhold the submitted information under section 552.116 of the Government Code. As you have not claimed any other exceptions to disclosure, the commission must release the submitted information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 562173

Enc. Submitted documents

c: Requestor
(w/o enclosures)