



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 22, 2015

Ms. Melanie Barton  
Assistant District Attorney  
Dallas County  
411 Elm Street, 5th Floor  
Dallas, Texas 75202-3317

OR2015-10086

Dear Ms. Barton:

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# 564916.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for (1) a copy of the audit conducted by the Department of Justice (the "DOJ") into the district attorney's office's federal forfeiture fund, and (2) any memorandum or e-mails sent by or to the DOJ about the audit. The district attorney's office states it does not have information responsive to a portion of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.108 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.116 provides the following:

- (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,

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 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, 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 state the submitted information pertains to an audit, authorized by federal law, of the district attorney's office by the DOJ relating to the district attorney's office's participation under the DOJ Equitable Sharing Program. Thus, you assert this information constitutes audit working papers that should be withheld under section 552.116. However, section 552.116 is intended to protect the auditor's interests. The information at issue is maintained by the district attorney's office, the auditee in this instance. As the auditee, the district attorney's office cannot assert section 552.116 in order to protect its own interest in withholding the information. Accordingly, we conclude the district attorney's office may not withhold the submitted information under section 552.116 of the Government Code.

The district attorney's office also raises section 552.108 for the submitted information. Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a

governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

As noted above, the district attorney's office states it is being audited by the DOJ for a compliance review under the Equitable Sharing Program. You state the release of the submitted information could interfere with law enforcement and prosecution because a state or local agency's non-compliance can result in civil enforcement actions or federal criminal prosecution. Upon review, we find the district attorney's office has failed to establish the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Accordingly, the district attorney's office may not withhold any of the submitted information under section 552.108(a)(1).

We note the remaining information contains information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>2</sup> Gov't Code § 552.130(a). Upon review, we find the district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

We also note the remaining information contains information subject to section 552.136 of the Government Code, which provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."<sup>3</sup> Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the district attorney's office must withhold the account numbers we have marked under section 552.136 of the Government Code.

In summary, the district attorney's office must withhold the information we have marked under section 552.130. The district attorney's office must withhold the account numbers we have marked under section 552.136 of the Government Code. The remaining information 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.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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](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,

A handwritten signature in cursive script that reads "Katelyn Blackburn-Rader".

Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/akg

Ref: ID# 564916

Enc. Submitted documents

c: Requestor  
(w/o enclosures)