



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2015

Mr. Don W. Minton
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950

OR2015-21433

Dear Mr. Minton:

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# 582869 (City No. 15-1052-397).

The City of El Paso (the "city") received a request for specified intake audits of the Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"). We understand you do not have some of the requested information.¹ You claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.116 of the Government Code provides:

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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 [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. The city states the submitted information consists of "audit working papers of an audit of the auditor of a state and/or the [c]ity." However, the city has not explained, or otherwise demonstrated, these audits were authorized or required by a statute of this state or the United States. *See id.* § 552.116(b)(1). Upon review, we find the city has failed to demonstrate the information at issue consists of audit working papers excepted from disclosure under section 552.116. *See id.* Thus, the city may not withhold any of the submitted information under section 552.116 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 has been found by this office to encompass information made confidential by federal regulations. *See Rainbow Group, Ltd. v. Tex. Employment Comm'n*, 897 S.W.2d 946 (Tex. App.—Austin 1995, writ denied) (court

approves office of attorney general finding to withhold, under section 552.101, unemployment compensation identification numbers as made confidential by federal regulations); *see also* Open Records Decisions Nos. 599 (1990), 373 (1983). The WIC program is regulated by Title 7 of the Code of Federal Regulations. Section 246.26(d) of title 7 of the Code of Federal Regulations pertains to the confidentiality of applicant and participant information. The relevant provision states:

(i) Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation, that individually identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other Federal, State or local law.

(ii) Except as otherwise permitted by this section, the State agency must restrict the use and disclosure of confidential applicant and participant information to persons directly connected with the administration or enforcement of the WIC Program whom the State agency determine have a need to know the information for WIC Program purposes. These persons may include, but are not limited to: personnel from its local agencies and other WIC State or local agencies; persons under contract with the State agency to perform research regarding the WIC Program, and persons investigating or prosecuting WIC Program violations under Federal, State or local law.

7 C.F.R. § 246.26(d)(1). The submitted information consists of identifying WIC applicant and participant information. None of the release provisions in section 246.26(d) apply. *Id.* § 246.26(d). Therefore, the information we have marked is confidential pursuant to section 246.26(d)(1) of title 7 of the Code of Federal Regulations and must be withheld under section 552.101 of the Government Code. The remaining information must be released.²

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/>

² As our ruling is dispositive we need not address your remaining argument.

[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

KBG/akg

Ref: ID# 582869

Enc. Submitted documents

c: Requestor
(w/o enclosures)