



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 12, 2016

Mr. Chris Sterner  
Deputy General Counsel  
Office of the Lieutenant Governor  
P.O. Box 12068  
Austin, Texas 78711

OR2016-10918

Dear Mr. Sterner:

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# 607837.

The Office of the Lieutenant Governor (the "lieutenant governor's office") received a request for all e-mails sent or received by the lieutenant governor's state e-mail account, as well as his daily schedule, for a specified time period. You state the lieutenant governor's office is releasing some information. You also state the lieutenant governor's office has withheld some information pursuant to section 306.004 of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.116 of the Government

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<sup>1</sup>Release of information subject to section 306.004(a) of the Government Code is governed by chapter 306, not the Act, and it is within the discretion of a legislator to either withhold or release such information. *See* Gov't Code § 306.004(a); *see also* Open Records Decision No. 648 at 3-7 (1996).

Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information contains a completed report and a completed audit report subject to subsection 552.022(a)(1). The lieutenant governor's office must release the information at issue pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You seek to withhold the information at issue under section 552.116 of the Government Code. However, section 552.116 is discretionary in nature and does not make information confidential under the Act. *See Open Records Decision No. 665 at 2 n.5 (2000)* (discretionary exceptions generally). Therefore, the lieutenant governor's office may not withhold any of the information subject to section 552.022(a)(1) under section 552.116 of the Government Code. As you raise no further exceptions to disclosure of this information, it must be released. However, we will address the applicability of section 552.116 to the remaining information, which is not subject to section 552.022.

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

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<sup>2</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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. You assert the remaining information consists of audit working papers from the State Auditor’s Office (the “SAO”) regarding audits conducted by the SAO as an independent auditor for Texas state government. The SAO has authority under section 321.013 of the Government Code to conduct investigations and audits of all state departments as specified in the state audit plan or as directed by the Legislative Audit Committee (the “LAC”). *See id.* § 321.013(a), (f). We note the lieutenant governor is joint-chair of the LAC. *See id.* § 321.002(e). You state the remaining information was provided by the SAO to the lieutenant governor in his capacity as joint-chair of the LAC. However, upon review, we find the remaining information was prepared or maintained after the relevant audits were completed and does not constitute audit working papers prepared or maintained in conducting an audit or preparing an audit report. Accordingly, the remaining information may not be withheld under section 552.116 of the Government Code. As you raise no further exceptions to disclosure of this information, it 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.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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/dls

Ref: ID# 607837

Enc. Submitted documents

c: Requestor  
(w/o enclosures)