



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 14, 2016

Mr. James G. Nolan
Associate Deputy General Counsel
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2016-20777

Dear Mr. Nolan:

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# 626511 (ORR# 12549876532).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for specified reports and audit commencement letters. You state the comptroller's office has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.116 of the Government Code 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, a hospital district, or a joint board operating under Section 22.074,

¹We 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 that those records contain substantially different types of information than that submitted to this office.

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 work in progress reports and audit commencement letters consist of audit working papers that were prepared or maintained by the comptroller’s office in conducting audits of unclaimed properties or entities with whom the comptroller’s office has contracted to conduct such audits. You also explain the unclaimed property audits are authorized by section 74.702 of the Property Code. *See Prop. Code § 74.702* (regarding comptroller’s office’s authority to examine records for purpose of enforcing chapter 74 of the Property Code). Further, you explain the comptroller’s office is authorized to contract for audit services in conducting these audits pursuant to section 74.703 of the Property Code. *See id.* § 74.703(a). Based on your representations and our review of the information at issue, we agree the submitted information constitutes audit working papers and the comptroller’s office may withhold this information under section 552.116 of the Government Code.²

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

You ask this office to issue a previous determination permitting the comptroller's office to withhold work in progress reports created or maintained during the course of an unclaimed property audit conducted under the authority of section 74.702 of the Property Code from the public as audit working papers on the basis of section 552.116 of the Government Code without seeking a ruling from this office. See Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us. Therefore, the comptroller's office may not rely upon this ruling as a previous determination regarding any other records 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 626511

Enc. Submitted documents

c: Requestor
(w/o enclosures)