



Office of the Attorney General
State of Texas

February 28, 1994

DAN MORALES
ATTORNEY GENERAL

Mr. Robert T. Jarvis
County Attorney
Grayson County
Justice Center, Suite 116A
Sherman, Texas 75090

OR94-114

Dear Mr. Jarvis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ We assigned your request ID# 24939.

Grayson County (the "county") has received a request for an "audit" of the Grayson County Tax Assessor's Office. Specifically, the requestor seeks the "'audit' of the Grayson County Tax Assessor's office, which covered a time period of or about October 1984 to September 1990 and was performed by the county auditor's office." You claim that the requested information, which you have submitted to us for review, is not subject to the act. In the alternative you claim that section 552.108 of the act exempts it from required public disclosure.

As a threshold issue, we address your contention that the requested information does not constitute public records. You contend that the "audit" is not a public record because it was never approved as a final audit pursuant to section 115.0035 of the Government Code. You contend "that the document in question is not a complete audit and is therefore not subject to the Open Records Act." We disagree. Section 552.021 of the act provides in pertinent part:

(a) Information is public information if, under a law or ordinance or *in connection with the transaction of official business*, it is collected, assembled, or maintained:

(1) by a governmental body; or

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.021 (emphasis added). It is immaterial under the act whether an audit is completed or approved or whether it is merely in draft form. Open Records Decision No. 321 (1982) at 2 (overruling Attorney General Opinion H-90 (1973)); *see also* Open Records Decision No. 140 (1976). The threshold question in each instance is whether information in the possession of a governmental body constitutes "information collected, assembled, or maintained by [the governmental body]" and is created "under a law or ordinance or in connection with the transaction of official business." *Id.* Clearly, the information at issue here was created "in connection with the transaction of official business," *i.e.*, in the course of an internal audit of the county tax assessor's office. Accordingly, we conclude that the requested records are public records subject to the act under section 552.021(a)(1).

Next we address your claim that the requested records may be withheld under section 552.108 of the act, which excepts:

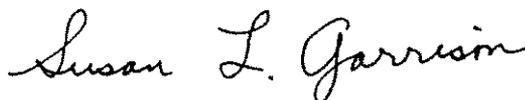
(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976). You advise us that the information submitted to us for review relates to an active criminal investigation. Accordingly, we conclude that the county may withhold the submitted information from required public disclosure under section 552.108 of the act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 24939

cc: Ms. Donna Hunt, Editor
Mr. Michael Quinn Sullivan, Staff Writer
The Denison Herald
P.O. Box 329
Denison, Texas 75020
(w/o enclosures)