



January 27, 2000

Ms. Janice Wilson
Associate General Counsel
Texas Department of Transportation
DeWitt C. Greer State Highway Building
125 E. 11th Street
Austin, Texas 78701-2483

OR2000-0279

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 131902.

The Texas Department of Transportation (the "department") received a request for a specified internal audit report. You have submitted a copy of the requested report for our review. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

As amended by the Seventy-sixth Legislature, section 552.022 of the Government Code provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under 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) (emphasis added). Although you contend that the requested audit report does not fall within section 552.022, the submitted document appears to this office to be a completed audit made for or by the department, and you have not provided any

information to the contrary. Therefore, unless the requested audit report is expressly confidential under other law, it is public information that must be released to the requestor pursuant to section 552.022(a)(1) of the Government Code.

You claim that the requested report is confidential under section 552.101 of the Government Code in conjunction with a procedural rule of the federal Equal Employment Opportunity Commission (“EEOC”). Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Although a federal regulation adopted pursuant to statutory authority can be the basis for a claim of confidentiality under section 552.101, *see* Open Records Decision No. 476 (1987), statutory confidentiality under section 552.101 generally requires express language making certain information confidential or stating that it shall not be released to the public. *See* Open Records Decision No. 478 (1987). We have reviewed the rule that you cite and related regulations governing EEOC proceedings. They do not contain language making information held by the department confidential or prohibiting the department from releasing such information to the public. *See, e.g.*, 29 C.F.R. §§ 1601.16, 1601.22. We therefore conclude that the submitted information is not expressly confidential under other law.¹ *Cf.* Open Records Decision No. 155 (1977). Consequently, the requested audit report is public information under section 552.022 of the Government Code, and the department must release it.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

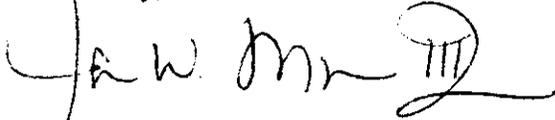
¹As section 552.103 of the Government Code does not make confidential information that it otherwise may except from disclosure, it is not applicable to information that section 552.022(a) specifically makes public. *See generally* Open Records Decision No. 638 (1996).

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J W Morris III". The signature is fluid and cursive, with the "III" clearly visible at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 131902

Encl. Submitted documents

cc: Mr. Gordon House
801 Delwood
Longview, Texas 75605
(w/o enclosures)