



September 12, 2000

Ms. Julie Joe  
Assistant Public Information Coordinator  
Office of the Attorney General  
P O Box 12548  
Austin, Texas 78207

Dear Ms. Joe:

Enclosed please find a corrected copy of ID# 138660 (OR2000-3451). The original document sent to you inadvertently was a misprint. We apologize for any inconvenience this oversight may have caused.

Sincerely,

Precilla Rodriguez  
Secretary to:  
Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/pr

Ref: ID# 138660

cc: Mr. Karem Said  
Texas Observer  
307 West 7<sup>th</sup> Street  
Austin, Texas 78701  
(w/enclosure)



September 6, 2000

Ms. Julie Joe  
Assistant Public Information Coordinator  
Attorney General's Office  
Office of the Attorney General  
P. O. Box 12548  
Austin, Texas 78711-2548

OR2000-3451

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138660.

The Office of the Attorney General (the "OAG") received a request for eight items of information regarding the Crime Victims' Compensation Division and the Crime Victims' Compensation Fund. Item 3 of that request was subsequently clarified. You have released information responsive to items 1, 4, 5, 7, and 8, but claim that the remaining requested information is excepted from disclosure under sections 552.111 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of the requested information.<sup>1</sup>

You assert that information responsive to requested item 2, specifically "notes, memos . . . concerning any audit of the Crime Victims' Compensation Fund during the current fiscal year, 9/1/99 to date" is excepted by section 552.116. 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 or institution of higher education as defined by Section 61.003, Education Code, is excepted from the requirements of Section 552.021. If

---

<sup>1</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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

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 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.

A governmental body that invokes section 552.116 must explain that the audit working papers are from an audit authorized or required by statute by identifying the applicable statute. You state that the audit is on-going and is being conducted under the authority of chapter 2102 of the Government Code. We have reviewed the submitted information. We conclude that the information constitutes "audit working paper[s]" as contemplated by Government Code section 552.116. Accordingly, the OAG may withhold Exhibit B under section 552.116.

Exhibit C contains samples of documents responsive to the request for notes regarding new administrative procedures (item 3 of request), and Exhibit D contains samples of documents responsive to the request for "copies of policies directing the allocation of relocation funds to victims" (item 6 of request). You claim that both exhibits are excepted from required public disclosure under section 552.111 of the Government Code. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Furthermore, in Open Records Decision No. 559 (1990), this office concluded that a preliminary draft of a document that is intended for public release in a final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such could be withheld pursuant to the statutory predecessor to section 552.111. Thus, section 552.111 also excepts draft documents to the extent that the draft documents pertain to the policymaking function of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of

internal memoranda. *Id.* at 4-5. In this case, all of Exhibits C and D relate to the policymaking functions of the OAG; the OAG may withhold Exhibits C and D under section 552.111. In summary, the OAG may withhold all of the submitted information under sections 552.116 and 552.111.

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 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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 "Patricia Michels Anderson", with a long horizontal flourish extending to the right.

Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/pr

Ref: ID# 138660

Encl. Submitted documents

cc: Mr. Karem Said  
Texas Observer  
307 West 7<sup>th</sup> Street  
Austin, Texas 78701