



January 12, 2001

Ms. Janice Mullenix
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2001-0136

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143195.

The Texas Department of Transportation (the "department") received a request for information gathered during an internal investigation conducted by John Pierson ("Mr. Pierson"), including all questions and answers asked during the investigation concerning the actions of the requestor. You claim that the requested information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.116 of the Government Code, as amended by the Seventy-sixth Legislature, provides in relevant part:

- (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 [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [required 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 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 inform us that Mr. Pierson is an internal department auditor who conducted the audit giving rise to the requested information at the request of the director of the department's audit office. You further inform us that this audit was authorized by several statutes, including sections 321.0131, 321.0132, 321.0133 and 321.0135 of the Government Code. After reviewing your arguments and the submitted information, we find that the submitted information constitutes audit working papers for purposes of section 552.116 of the Government Code. Consequently, the department may withhold the submitted information from required public disclosure under section 552.116.

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 Hadassah Schloss at 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 143195

Encl. Submitted documents

cc: Mr. Weaver T. Jackson
15014 Misty Bend Lane
San Antonio, Texas 78217
(w/o enclosures)