



March 13, 2001

Ms. Susan K. Steeg  
General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR2001-0962

Dear Ms. Steeg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144914.

The Texas Department of Health ("TDH") received a request for any report, working papers and/or notes, generated by its Office of Internal Audit concerning a complaint filed by the requestor on October 13, 2000. In addition, the requestor seeks all materials he provided to the Office of Internal Audit during the course of their investigation. You have released most of the requested information; however, you assert the remaining 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 information.<sup>1</sup>

You assert that the responsive information is excepted from disclosure under section 552.116 of the Government Code. This section 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

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<sup>1</sup> We note that several documents are unresponsive to the original request but have been submitted to this office because they contain handwritten notes and marks made by auditors during the course of their audit. Consequently, we do not rule on any portion of these documents other than those handwritten portions contained therein.

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.

Gov't Code § 552.116. 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 represent that the Texas Board of Health directed the audit at issue pursuant to section 2102.007(a)(6) of the Government Code through its delegation to the Commissioner of Health, and that the executive deputy commissioner of the department instructed the internal audit office to perform this audit. You further state that the audit dealt with management issues, use of resources, personnel and salary issues, program conflicts and program performance as well as allegations of impropriety and malfeasance in relation to state funds and financial issues as defined by sections 321.0133, 321.0134 and 321.0136 of the Government Code.

From our review of the submitted materials, we conclude that this audit is authorized under section 2102.007 of the Government Code, and therefore, the information at issue falls within the purview of section 552.116 of the Government Code. Because section 552.116 is dispositive, we do not address your other claimed exception.

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/DBF/seg

Ref: ID# 144914

Encl. Submitted documents

cc: Mr. Charles Pankey  
1510 West North Loop Boulevard  
Austin, Texas 78756  
(w/o enclosures)