



May 31, 2001

Ms. Michelle Simpkins
Winstead, Sechrest & Minick
100 Congress Avenue, Suite 800
Austin, Texas 78701

OR2001-2247

Dear Ms. Simpkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147817.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received a request for all available documents relating to a financial audit for fiscal year 2000. You indicate that the district has released the final audit report and all documents in its possession relating to the final audit. However, you contend that certain audit working papers are not "public information" for purposes of the Public Information Act (the "Act"). We have considered your argument and reviewed the submitted information.

The Public Information Act applies only to "public information." *See* Gov't Code § 552.021. "Public information" is defined under section 552.002 of the Act as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

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

In Open Records Decision No. 445 (1986), this office addressed whether notes and information acquired by an outside consultant in preparation of a report were "public information" for purposes of the Act. In that case, the consultant contracted with the governmental body to provide a comprehensive written report to the governmental body. *Id.* However, the contract did not provide the governmental body access to notes and information acquired by the consultant in preparation of the report. *Id.* Furthermore, the

governmental body indicated that it did not possess the information and did not know the contents of the information. *Id.* This office held that the notes and information acquired by the consultant in preparation of the report were not “public information” for purposes of the Act and therefore were not required to be disclosed. *Id.* Similar to the situation in Open Records Decision No. 445, you indicate that the audit was conducted for the district by a private auditor. Furthermore, you state that while the private auditor agreed to supply the final audit report to the district, there was no such agreement with respect to the audit working papers produced by the private auditor during the audit. Indeed, according to you, the private auditor, in its normal course of business, does not release its audit working papers to its clients. Thus, while the auditor provided the district with a final audit, you state that the private auditor did not release its working papers to the district. Based on the information you have provided, we agree that most of the auditor’s working papers are not “public information” under the Act because the district neither possesses nor has access to the papers. *Id.* Gov’t Code § 552.002. However, we note that the submitted working papers appear to include information provided by the district to the auditor. To the extent the auditor’s working papers were provided by the district, we find the working papers are “public information.” *See* Gov’t Code § 552.002. Because you have not raised any exceptions to disclosure of the information and it does not appear on the face of the information that it is confidential, we find you must release those documents provided to the auditor by the district. *See id.* §§ 552.301, .302. We have marked several documents representative of the types of documents that must be released.

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

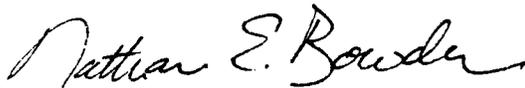
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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 Dep't of Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 147817

Encl: Submitted documents

cc: Mr. John C. McLemore
8400 Cornerwood Drive
Austin, Texas 78717
(w/o enclosures)