

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



October 4, 2001

Ms. Susan Rocha
Denton & Navarro
Attorneys And Counselors
1700 Tower Life Building
310 South St. Mary's Street
San Antonio, Texas 78205-3111

OR2001-4476

Dear Ms. Rocha:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 152772.

The San Antonio Water System (the "SAWS") received a request for "[a]ny and all records (paper and/or electronic) maintained and/or generated by SAWS internal audit department and staff." You state that you are releasing portions of the requested information. You claim that other portions of the requested information are excepted from disclosure under sections 552.022 and 552.111 of the Government Code.¹ Section 552.022 does not provide an exception to required public disclosure of requested information, but, rather, sets out categories of public information to which the Act's exceptions to disclosure generally do not apply. Thus, of your claims, we will consider only section 552.111. We have reviewed the information you have submitted as a representative sample of the information at issue.²

¹In its August 7, 2001, correspondence to this office, SAWS withdraws its section 552.101 claim.

²In reaching our conclusion here, 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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We begin with the documents that are subject to section 552.022. Section 552.022, which makes public certain categories of information, reads in pertinent part as follows:

§ 552.022. Categories of Public Information; Examples

(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;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(7) a description of an agency's central and field organizations, . . .

The submitted records include information within section 552.022(a) categories (1), (3) and (7). This information is not excepted from disclosure unless it is "expressly confidential under other law," or, in the case of the information within the subsection (1) category, excepted under section 552.108. You do not raise section 552.108. Section 552.111 is not "other law" for purposes of section 552.022. Accordingly, the section 552.022 information is subject to required public disclosure. We have marked the information subject to required public release under section 552.022.

Section 552.111 excepts from disclosure "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. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). An agency's policymaking functions 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. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5.

You raise section 552.111 for information that you claim reveals the opinion, recommendation and advice of the audit department regarding its final report to the SAWS Board of Directors. You categorize your submitted audit files as either 1. permanent files, which you say are maintained to facilitate regular audits of particular subject matter, or, 2. files for completed audits. You have failed to mark the portions of the submitted files for which you raise section 552.111 and instead, have submitted the entire files with a cover sheet on which you state that section 552.111 applies to all documents. Nevertheless, we have reviewed the files to glean auditor opinion, recommendation and advice reflecting SAWS policymaking. We believe the category 2 audit information concerns internal administrative or personnel matters rather than policymaking. Thus, section 552.111 does not apply to any of the category 2 information. However, we have marked a portion of the category 1 information to which section 552.111 applies.

The files contain some information that is subject to section 552.117(1) of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, SAWS may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, SAWS must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. SAWS may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. We have marked some information that may be subject to section 552.117(1). We also note that the cell phone use audit records may contain employee home phone numbers that are excepted from disclosure based on section 552.117.

You seek to withhold from disclosure some records that you say are held by Garza-Gonzales & Associates," a private CPA firm. You argue that such records are not "public information" subject to the Public Information Act since you say SAWS does not maintain the records and has no agreement with the firm under which the firm must give SAWS access to the information. You also state that the firm does not provide its working papers to its clients when it conducts final audits.

The Act applies to “public information,” which is defined under section 552.002 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.

Gov’t Code § 552.002; *see also id.* § 552.021. Based on the information you have provided, we agree that the firm’s working papers are not “public information” under that Act because SAWS neither possesses nor has access to the papers. *See id.* § 552.002. However, to the extent the firm’s working papers include information SAWS provided the firm, the working papers are “public information.” *See id.* You failed to submit to this office the firm’s information. Thus, to the extent the firm’s information includes documents provided to the firm by SAWS, it is presumed to be public, and section 552.111 cannot apply. *See Gov’t Code* §§ 552.301, .302; Open Records Decision No. 515 (1989).

In addition, we have marked bank account information that is excepted from disclosure based on a recent amendment to the Act that will be codified as section 552.136 of the Government Code. Act of May 14, 2001, 77th Leg., R.S., ch.356, § 1, 201 Tex. Gen. Laws 614. The new provision states that a “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* Access device means, among other things, an account number, that alone or in conjunction with another access device may be used to obtain money, goods, services, or another thing of value or initiate a transfer of funds other than a transfer originated solely by paper instrument. *Id.*

Finally, the records include information subject to section 552.130, which provides in relevant part:

- (a) Information is excepted from the requirement of Section 552.021 if the information relates to:
 - (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
 - (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the information we have marked as excepted under section 552.130.

In summary, we have marked portions of the information SAWS may withhold from the requestor based on section 552.111, and must withhold based on sections 552.117, 552.130 and the exception to be codified as section 552.136. SAWS audit information held by a private law firm is not subject to disclosure under the Act unless the firm obtained the information from SAWS. SAWS must release to the requestor the remaining information.

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).

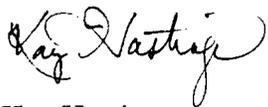
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 152772

Enc: Submitted documents

cc: Mr. Brian Collister, Reporter
KMOL-TV
1031 Navarro Street
San Antonio, Texas 78205
(w/o enclosures)

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CAUSE NO. GN103370

SAN ANTONIO WATER SYSTEMS
BOARD OF TRUSTEES and EUGENE
HABIGER,

Plaintiffs,

V.

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS,

Defendant.

§ IN THE DISTRICT COURT OF
§
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§
§ 353rd JUDICIAL DISTRICT

FILED

05 OCT -7 AM 8:51

Maria Rodriguez-Ramirez
DISTRICT CLERK

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiffs San Antonio Water Systems Board of Trustees ("SAWS"), and Defendant Greg Abbott, Attorney General of Texas appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. (Eugene Habiger sued in his official capacity and is no longer with SAWS; therefore, he is being dropped from this lawsuit.) This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Brian Collister, KMOL-TV, was sent reasonable notice of this setting and of the parties' agreement that SAWS must withhold some of the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. Some of the information still at issue, specifically those documents represented by

Bates numbers in parentheses in Exhibit A to this Judgment are excepted from disclosure by Tex. Gov't Code § 552.116, except as provided in ¶ 3 of this Judgment.

2. SAWS may withhold from the requestor the information enumerated in ¶ 1 of this Judgment.

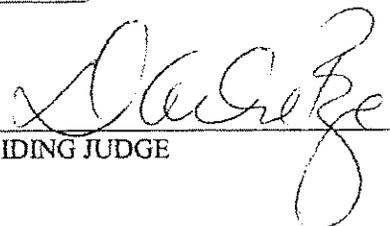
3. SAWS no longer contests the disclosure of and represents that it has disclosed the documents represented by Bates numbers that are shaded or that are not specifically enumerated in parentheses, in Exhibit A to this Judgment.

4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and

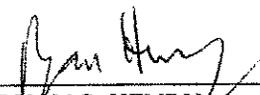
6. This Agreed Final Judgment finally disposes of all claims between Plaintiffs and Defendant and is a final judgment.

SIGNED this the 7 day of Oct, 2005.

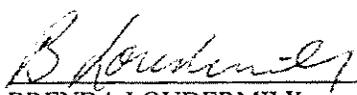


PRESIDING JUDGE

APPROVED:



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