



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 10, 2003

Mr. Joey Longley
Director
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711-3066

OR2003-1274A

Dear Mr. Longley:

This office issued Open Records Letter No. 2003-1274 (2003) on February 27, 2003. In that ruling, this office determined that the Sunset Advisory Commission (the "commission") failed to submit a copy of the request at issue as required by section 552.301(e) of the Government Code. Since we issued that ruling, we have received a March 3, 2003 letter from the commission in which it contends that this office made a factual error, and that the commission did timely submit a copy of the request for information. In support of its contention, the commission submitted an affidavit from a staff attorney for the commission in which the attorney states that she personally enclosed a copy of the request in the commission's December 16, 2002 brief to this office. Based on the information you have provided, we determine that we made an error and find that the commission did meet its burden under section 552.301 of the Government Code. Therefore, we will consider the merits of all of the arguments you originally raised. This decision will serve as a substitute for the decision we issued on February 27, 2003.

The commission received a request for "all surveys of sworn complainants, respondents, the public, or any other persons or entities relating to the Texas Ethics Commission [the "TEC"], including the surveys, correspondence, responses, answers, drafts, notes, analysis, or any other documents of any kind," and "[a]ny and [sic] reviews or analysis of complaints or the handling of sworn complaints related to the [TEC], including the analysis, reports, charts, spreadsheets, drafts, notes, background material, and any and all other documents of any kind." You claim that the requested information is excepted from disclosure under sections 552.101, 552.106, 552.111, and 552.116 of the Government Code. We have

considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We begin by noting that the submitted information contains a completed staff report that is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(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

Gov't Code § 552.022(a)(1). Therefore, the completed staff report must be released unless it is excepted from disclosure under section 552.108 of the Government Code or is confidential under other law. You do not contend that the report is excepted from disclosure under section 552.108. Furthermore, sections 552.106, 552.111, and 552.116 are discretionary exceptions and do not constitute other law under which information is made confidential. *See* Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.111), 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived). Therefore, the commission may not withhold the submitted staff report under section 552.106, 552.111, or 552.116, but must release the report, in full, to the requestor.

With respect to the remainder of the submitted information, we will address your argument under section 552.116 of the Government Code. Section 552.116 of the Government Code provides as follows:

(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:

¹We 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). 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.

(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 demonstrate that the audit working papers are from an audit authorized or required by statute by identifying the applicable statute. You indicate that the documents at issue consist of audit working papers prepared or maintained in conducting a performance evaluation of the TEC under section 325.008 of the Government Code. After reviewing your arguments and the submitted information, we find that the commission may withhold the submitted information that is not otherwise subject to section 552.022 under section 552.116. As we are able to make this determination, we need not address your remaining arguments against disclosure.

You ask this office to issue a previous determination authorizing the commission to withhold similar information in similar cases in the future. We decline to issue a previous determination at this time allowing the commission to withhold the general category of information requested in this case in the future. *See* Open Records Decision No. 673 (2001).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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# 176995

Enc: Submitted documents

c: Mr. Fred Lewis
Campaigns for People
5035 Burnet Road, Suite 100
Austin, Texas 78756
(w/o enclosures)

Senator Jane Nelson
P.O. Box 12068
Austin, Texas 78711
(w/o enclosures)