



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 26, 2003

Ms. Lisa Hernandez
Staff Attorney
Texas Commission on Alcohol and Drug Abuse
P.O. Box 80529
Austin, Texas 78708-0529

OR2003-2039

Dear Ms. Hernandez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178334.

The Texas Commission on Alcohol and Drug Abuse (the "commission") received a request for: (1) a list of businesses that have submitted applications for new facility treatment licenses from December 1, 2002 through January 3, 2003, including the agency's name, executive director's name, phone number and address, (2) copy of the risk assessment criteria used by the fiscal compliance department and a copy of the spreadsheet of scores for all commission funded agencies, with narrative descriptions and explanations, (3) list of all commission funded agencies selected to have a program compliance audit in fiscal year 2003, (4) a list of all commission funded agencies selected to have fiscal compliance audit in fiscal year 2003, and (5) a list of all agencies currently on high-risk status. You claim that a portion of the requested information is excepted from disclosure under section 552.116 of the Government Code. To the extent other information responsive to the request exists, we presume you have released it to the requestor. If you have not, you must do so at this time. See Gov't Code § 552.301, .302. We have considered the exception you claim and reviewed the submitted information.

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 [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [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 advise us that the submitted information was created in preparation for financial and programmatic audits conducted by the commission's Fiscal Compliance Division and Program Compliance Division. You further inform us that the purpose of the audits was to audit the expenditure of funds and provision of services by the commission's contract recipients. You state that these audits are authorized by section 461.012(a)(9) of the Health and Safety Code, which requires the commission to "consistently monitor the expenditure of funds and the provision of services by all grant and contract recipients." Health & Safety Code § 261.012 (a)(9) Based on your representations and our review of the submitted documents, we agree that the information consists of "audit working papers" for purposes of section 552.116(b)(2). Therefore, you may withhold the submitted information 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 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 178334

Enc: Submitted documents

c: Ms. Rhonda G. Patrick
Blue Basin Consulting
P.O. Box 310366
Houston, Texas 77231
(w/o enclosures)