



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 3, 2003

Mr. D. Craig Wood  
Langley & Banack  
745 East Mulberry, Suite 900  
San Antonio, Texas 78212-3166

OR2003-3778

Dear Mr. Wood:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182120.

The Alamo Community College District (the "district") received a request for (1) statements or affidavits made by employees involved in an internal auditor's report; (2) names and information obtained from employees regarding the internal auditor's investigation; and (3) information forwarded to the district attorney's office. You claim that some of the requested information is excepted from disclosure under sections 552.103, 552.108, 552.116, and 552.135 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted. We assume that the district has released any other information that is responsive to this request, to the extent that the district held or had access to such information when it received this request. If not, then the district must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).

We first note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that

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[.]

Gov't Code § 552.022(a)(1), (3). In this instance, the information submitted as Exhibit B is a completed audit made of, for, or by the district. The district must release that information under section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. You claim that the audit is excepted from disclosure under sections 552.103 and 552.108. We note, however, that section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 542 at 4 (1990) (litigation exception may be waived). As such, section 552.103 is not other law that makes information expressly confidential for purposes of section 552.022. Therefore, the district may not withhold the audit under section 552.103. Furthermore, some of the information submitted as Exhibit C is subject to section 552.022(a)(3) and thus may be withheld only if that information is expressly confidential under other law. Section 552.116, which you raise with regard to the section 552.022(a)(3) information in Exhibit C, also is a discretionary exception to disclosure. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the information that is subject to section 552.022(a)(3) under section 552.116. We have marked the information in Exhibit C that is encompassed by section 552.022(a)(3).

We note that the section 552.022(a)(3) information includes account numbers. With regard to that information, section 552.136 of the Government Code provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

Gov't Code § 552.136. We have marked the account number information in Exhibit C that the district must withhold under section 552.136. We note that the requestor has a special right of access to his own account number information. *See* Gov't Code § 552.023

Next, we address your claim under section 552.108 of the Government Code with regard to the completed audit submitted as Exhibit B. Section 552.108(a)(1) excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the information in question does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the district forwarded the information contained in Exhibit B to the Bexar County District Attorney's Office prior to the date of the district's receipt of the present request for information. You state that the district believes that the release of Exhibit B could interfere with the investigation or prosecution of crime. Based on your representations and our review of the information in question, we conclude that the district has demonstrated that section 552.108(a)(1) is applicable to Exhibit B. *See* Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 372 at 4 (1983) (law enforcement exception may be invoked by any proper custodian of information relating to incident allegedly involving criminal conduct that remains under active investigation or prosecution). Therefore, the district may withhold Exhibit B under section 552.108 of the Government Code.

Lastly, we address your claim under section 552.116 of the Government Code with regard to the information in Exhibit C that is not subject to section 552.022(a)(3). Section 552.116 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 state that the remaining information in Exhibit C consists of working papers from audits conducted by the district's internal auditor. You have provided an affidavit stating that this information was accumulated or prepared by the district's internal auditor in connection with an audit. You also inform us that the district is an institution of higher education under section 61.003 of the Education Code. Based on your representations, the submitted affidavit, and our review of the information in question, we conclude that you have demonstrated that the information in Exhibit C that is not subject to section 552.022(a)(3) constitutes audit working papers under section 552.116(b)(2). Therefore, the district may withhold that information under section 552.116.

In summary, the district may withhold all of the information submitted as Exhibit B under section 552.108 of the Government Code. The district may withhold all of the information in Exhibit C that is not subject to section 552.022(a)(3) under section 552.116. The district must withhold some of the information that is subject to section 552.022(a)(3) under section 552.136. The district must release the rest of the submitted information. As we are able to make these determinations, we need not address section 552.135.

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

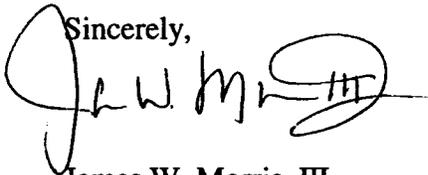
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 182120

Enc: Submitted documents

c: Dr. Ernest A. Martinez  
c/o D. Craig Wood  
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(w/o enclosures)