OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 9, 2003

Ms. Rebecca L. Payne
Assistant General Counsel
Texas Department of Human Services
P. O. Box 149030
Austin, Texas 78714-9030

OR2003-3950

Dear Ms. Payne:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182500.

The Texas Department of Human Services (the "department") received a request for "Notification of Review Findings - CACFP - Child Care Centers (CACFP-CCC) For Children's Development Center 2000 which was reviewed for the month of December 2002 by the Houston Program Area Office Tx: 101-0387." You claim that the requested information is excepted from disclosure pursuant to section 552.116 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.116 provides in relevant part:

> 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.

Gov't Code § 552.116(a). You explain:

> Through contracts with independent day-care centers and sponsoring organizations, the department's Child and Adult Care Food Program ("CACFP") provides cash reimbursement to child and adult day-care

> providers ("contractors") for serving meals to participants who meet U.S. Department of Agriculture ("USDA") standards. The CACFP is administered under the authority of the National School Lunch Act, 42 U.S.C.A. §§ 1751-1769h (1994 & Supp. 2000), and the Child Nutrition Act of 1966, 42 U.S.C.A. §§ 1771-1790 (1994 & Supp. 2000). Section 17 of the National School Lunch Act, as amended, authorizes assistance to States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children or adult participants in nonresidential institutions which provide care. 7 C.F.R. § 226.1 (2000).

The information at issue pertains to the department's administration of the above-described programs. An "audit" as that term is used in section 552.116 means "an audit authorized . . . by a statute of this state or the United States[.]" Gov't Code § 552.116(b)(1). We note that as part of administering the above-described programs, federal regulations specifically provide that the "books and records of the food service management company pertaining to the institution's food service operation shall be available for inspection and audit by representatives of the [department]." 7 C.F.R. § 226.6(i)(5). Thus, the department is specifically authorized to conduct such audits. Further, your representations demonstrate that the submitted documents meet the definition of an "audit working paper." *See* Gov't Code § 552.116(b)(2). We therefore conclude that the department may withhold the submitted information under section 552.116 of the Government Code.

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

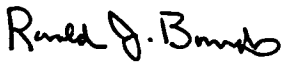
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 182500

Enc. Submitted documents

c: Ms. Angela Miller
Child Care Services
P.O. Box 71
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(w/o enclosures)