



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2003

Ms. Ruth H. Soucy
Deputy General Counsel
Comptroller of Public Accounts
P. O. Box 13528
Austin, Texas 78711-3528

OR2003-6411

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187536.

The Comptroller of Public Accounts (the "comptroller") received two requests for eighteen categories of information, including all proprietary records, reports, evaluations and notes, relating to a named entity. You state that some information has been provided to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

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.

You state that the information you have submitted consists of internal notes and memos prepared by auditors conducting tax audits under the authority of section 111.004 of the Tax Code. You further state that the submitted information consists of "intra-agency reports and intra-agency work manager comments that were prepared or maintained in conducting an audit or preparing an audit report and that are reviewed by the audit supervisor and other auditors." Based on your representations, we agree that the comptroller may withhold the submitted records pursuant to section 552.116 of the Government Code.

Finally, we note that the requestor states he was authorized to receive the requested information, and contends he has a right of access to the information pursuant to section 552.023 of the Government Code. Section 552.023 gives a person or a person's authorized representative a "special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023. In this instance, section 552.116 specifically prohibits the comptroller from releasing the requested information. Because section 552.116 protects the governmental body's interest and expressly excepts the information from the requirements of section 552.021 of the Government Code, we conclude section 552.023 does not provide the requestor with a special right of access to the requested information. *Cf.* Open Records Decision No. 556 (1990) (noting when a requestor seeks information concerning himself, governmental body cannot claim exception designed to protect requestor's privacy interest as basis for nondisclosure).

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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 187536

Enc. Submitted documents

c: Mr. Tommy Morgan
State Tax Management & Review
1411 Grinnell
Dallas, Texas 75216
(w/o enclosures)