



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2005

Ms. Lynn Rossi Scott
Bracewell & Patterson L.L.P.
500 North Akard Street, Suite 4000
Dallas, Texas 75201-3387

OR2005-01029

Dear Ms. Scott:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 218181.

The Bremond Independent School District (the "district"), which you represent, received a request for an audit report and its work papers, as well as district employee and financial information. You state you will make available to the requestor most of the requested information, including the final audit report, but claim that the requested working papers of the audit are not subject to the Act. We have considered your arguments.

Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." The Act does not ordinarily require a governmental body to obtain information that is not in its possession. Open Records Decision Nos. 445 (1986), 317 (1982). However, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. See Open Records Decision No. 462 (1987). Where a third party has prepared information on behalf of a governmental body, the information is subject to the Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990).

In Open Records Decision No. 445 (1986), this office addressed whether notes and information acquired by an outside consultant in preparation of a report were "public information" for purposes of the Act. In that open records decision, the consultant contracted with the governmental body to provide a comprehensive written report to the governmental

body. *Id.* However, the contract did not provide the governmental body access to notes and information acquired by the consultant in preparation of the report. *Id.* Furthermore, the governmental body indicated that it did not possess the information and did not know the contents of the information. *Id.* This office held that the notes and information acquired by the consultant in preparation of the report were not “public information” for purposes of the Act, and thus not required to be disclosed. *Id.*

The information at issue consists of work papers pertaining to an audit conducted for the district by Hudson Anderson & Associates, P.C. (“Hudson”), a private auditor. You state that the district does not own or have a right of access to the information at issue, and in support of this, you have submitted the district’s contract with Hudson. The contract includes the following provision: “[t]he workpapers for this engagement are the property of Hudson Anderson & Associates, P.C. and constitute confidential information.” You also state “because of the confidentiality agreement of this information, [the district] does not possess the information and does not know the contents of the information” and “any documents provided to the auditor by [the district] will be made available to the requestor.” The district’s contract with Hudson does not provide the district a general right to access or inspect the work papers of an audit conducted by Hudson. In addition, based on your assertions, we believe the information at issue constitutes audit work papers within the exclusive possession of Hudson. Thus, we find that this information was not “collected, assembled, or maintained” by or for the district for purposes of section 552.007. Accordingly, we conclude that the audit work papers at issue are not “public information” under the Act, and the district is not required to produce it in response to the request for information. Gov’t Code § 552.002; *see* ORD 445.

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

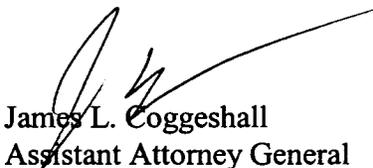
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 218181

c: Mr. Kenneth Swick
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