ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2005

Mr. Brad Norton
Assistant City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2005-10349

Dear Mr. Norton:

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# 236368.

The City of Austin (the "city") received a request for the personnel files belonging to a named individual and the requestor, the meeting schedules of the named individual and all information regarding a complaint against the requestor. You claim that the submitted 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.

Initially, we note that you have only submitted audit working papers for our review. To the extent any additional responsive information existed on the date the city received this request for information, we assume it has been released. If the city has not released any such records, it must do so at this time. *See* Gov't Code §§ 552.301(a),.302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, or a joint board operating under Section 22.074, Transportation Code, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 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, the charter or an ordinance of a municipality, an order of the commissioners court of a county, or a resolution or other action of a joint board described by Subsection (a) 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, as amended by Act of May 17, 2005, 79th Leg., R.S., H.B. 1285, §§ 1-2 (effective May 27, 2005). A governmental body that invokes section 552.116 must demonstrate that the audit working papers are from an audit authorized or required by statute by identifying the applicable statute. A statute is defined as a law passed by a legislative body at the federal, state, county, or city level of government. *See* BLACK'S LAW DICTIONARY 1420 (7th ed. 1999), BLACK'S LAW DICTIONARY 1410 (6th ed. 1990). A municipal charter, which is "a legislative enactment conferring the governmental powers of the state upon its local agencies," falls under this definition of a "statute." *Id.* at 1017.

You state that section 17 of Article VII of the Charter of the City of Austin established the position of city auditor and imparts to it the "responsibility to conduct, or cause to be conducted, financial, performance, investigative, and other audits following government auditing standards as promulgated by the Comptroller General of the United States." You also inform us that the authority of the city auditor to conduct audits is further authorized by chapter 2-3 of the Austin City Code. We understand you to represent that the audits at issue were initiated by the office of the city auditor under the authority granted by chapter 2-3-5 of the Austin City Code. Based on our review of your representations and the information at issue, we find you have demonstrated that this information was prepared or maintained by the city's auditors in conducting audits authorized or required by the charter or an ordinance of a municipality. *See* Gov't Code § 552.116(a), (b)(1), (b)(2). Accordingly, the city may withhold the information you submitted 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).

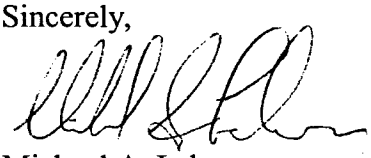
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Michael A. Lehmann
Assistant Attorney General
Open Records Division

MAL/sdk

Ref: ID# 236368

Enc. Submitted documents

c: Mr. Douglas Bedford
13904 FM 969
Austin, Texas 78724
(w/o enclosures)