



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2006

Ms. Linda R. Frank
Assistant City Attorney
City of Arlington
P. O. Box 90231
Arlington, Texas 76004-3231

OR2006-02584

Dear Ms. Frank:

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# 244124.

The City of Arlington (the "city") received three requests from different requestors. The information sought by these requests includes: 1) a specified audit presented to the Mayor and City Council on December 20, 2005; 2) the modified audit subsequently presented to the City Council; and 3) the name of an individual involved in a specified conversation. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.116 and 552.139 of the Government Code. We have considered your arguments and reviewed the submitted information.

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 § 552.116.¹ You state that the City Auditor is conducting the audit within the scope of his authority as the City Auditor as contemplated by the City of Arlington Code of Ordinances. See City of Arlington Code of Ordinances, Administration Chapter, § 2.05(H)(2)(d). Further, you state that the requested information was created during the course of the investigation for the ongoing audit conducted by the City Auditor. You also state, and provide documentation showing, that the city has hired a consulting group for further evaluation. Thus, you state that the audit is not yet final and that the requested information constitutes audit working papers. Based on your arguments and our review, we agree that the requested information constitutes audit working papers under section 552.116, and may be withheld on that basis.²

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

¹As amended by Act of May 17, 2005, 79th Leg., R.S. ch. 202, § 1, 2005 Tex. Sess. Law Serv. (Vernon).

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 244124

Enc. Submitted documents

c: Ms. Susan Schrock
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Mr. Bruce Deramus
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Arlington, Texas 76018

Mr. Jerome Pikulinski
2803 Oak Cliff Lane
Arlington, Texas 76012
(w/o enclosures)