ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2006

Mr. Mike Greenberg
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756

OR2006-05402

Dear Mr. Greenberg:

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# 249913.

The Texas Department of State Health Services (the "department") received a request for information pertaining to an audit of Renaissance III, Inc. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the Office of the Attorney General. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.116 provides the following:

> (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, or a municipality 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.
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> (b) In this section:
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> > (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:
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> (A) intra-agency and interagency communications; and
>
> (B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state that the submitted documents are audit working papers and that they consist of "information from the departments' Contract Monitoring and Oversight Unit, the HIV/STD Region 2/3 Office and [department] Field Operations Unit which are responsible for the oversight and compliance functions and the HIV/STD treat service providers." You assert that the Texas Board of Health directed the audit at issue pursuant to section 2102.007(a)(6) of the Government Code through its delegation to the Commissioner of Health, and that the internal audit office gathered the records at issue in preparation for performing this audit. You further indicate that the audit at issue was a periodic compliance audit. *See* Gov't Code §§ 321.0132, 2102.003(3)(B). Based on your representations, we conclude that the submitted information constitutes audit working papers for purposes of section 552.116; therefore, the department may withhold the information under that section.[1]

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

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[1]As we are able to resolve this under section 552.116, we do not address your other arguments for exception of the submitted information.

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. 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/eb

Ref: ID# 249913

Enc. Submitted documents

c: Mr. Jerry L. Ewing, Jr.
Walters Balido & Crain, L.L.P.
900 Jackson Street, Suite 600
Dallas, Texas 75202
(w/o enclosures)