



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 22, 2008

Mr. Miles T. Bradshaw
Feldman & Rogers, L.L.P.
5718 Westheimer, Suite 1200
Houston, Texas 77057

OR2008-00977

Dear Mr. Bradshaw:

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# 300171.

The Houston Community College System (the "system"), which you represent, received a request for five categories of various bills and correspondence. You state that the system has no information responsive to a portion of the first category of the request. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.-San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3. You further state that the system will provide the requestor with the remaining information requested in the first category of the request and the information responsive to the fourth category of the request. You claim that information responsive to the fifth category of the request 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Initially, you assert that categories two and three of the request have been withdrawn by operation of law. You state, and provide documentation showing, that you provided the requestor with an itemized cost estimate for information responsive to categories two and three of the request as required by section 552.2615(a) of the Government Code. Upon review, we agree that the cost estimate complies with the provisions of section 552.2615. Further, you state that the requestor did not respond to the estimate as required by section 552.2615(b). Accordingly, we agree that categories two and three of the request were withdrawn by operation of law and the system need not provide any information in response to these categories of the request. See Gov't Code § 552.2615.

Next, we address your assertion that some of the submitted information is not responsive to the fifth category of the request. This portion of the request seeks all e-mails, letters and faxes between the system and the Texas State Auditor's Office (the "auditor") related to reimbursement. You argue that the specific documents do not qualify as communications

between the two entities and, therefore, are not responsive to the request. We note that a governmental body must make a good-faith effort to relate a request for information to responsive information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). The documents at issue were provided to the auditor by the system as part of the audit investigation. Therefore, we conclude these documents are responsive to the request. Thus, we will examine the arguments for their exception from disclosure under the Act.

Section 552.116 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, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, 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, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, 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. You contend that the submitted information constitutes audit working papers prepared or maintained as part of an investigation of the system by the auditor. We note, however, that section 552.116 is intended to protect the auditor's interests. In this instance, the audit was conducted by the State Auditor's Office. The information at issue is maintained by the system, the auditee. As the auditee, the system cannot assert section 552.116 in order to protect its own interest in withholding the information.

Accordingly, section 552.116 is inapplicable and does not protect the submitted information from disclosure. As the system raises no further exceptions to disclosure, the submitted information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,

A handwritten signature in black ink, appearing to read 'Chris Schulz', with a long horizontal flourish extending to the right.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/jb

Ref: ID# 300171

Enc. Submitted documents

c: Ms. Lois Davis
3310 Cherry Creek
Missouri City, Texas 77459
(w/o enclosures)