



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2008

Mr. Miguel A. Saldana
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
103 East Price Road, Suite A
Brownsville, Texas 78521

OR2008-07732

Dear Mr. Saldana:

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# 312020.

The Brownsville Independent School District (the "district"), which you represent, received a request for an audit performed for the district by MedReview, LLC in the spring of 2007. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You claim that the submitted information is subject to section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is considered to be confidential under other constitutional, statutory, or decisional law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). You have not directed our attention

¹Although you mention the attorney-client privilege, you have not submitted arguments explaining how the privilege applies to the submitted information. Thus, the district has waived its claims under this exception. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general).

to any law under which any of the submitted information is considered to be confidential for the purposes of section 552.101. We therefore conclude that the district may not withhold the submitted information under section 552.101 of the Government Code.

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 state that the requested information is maintained by the district as part of the working papers of an audit conducted by MedReview, LLC. You have not demonstrated, however, that any resolution or other action of the district's board of trustees authorizes or requires the district to conduct an audit. *See* Gov't Code § 552.116(a), (b)(1); *see also* Open Records Decision No. 580 (1990) (addressing statutory predecessor to Gov't Code § 552.116). Thus, we find that you have not demonstrated that any of the requested information constitutes audit working papers for the purposes of section 552.116, and we

therefore conclude that the district may not withhold any of the submitted information under section 552.116 of the Government Code. As you raise no further exceptions against 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).

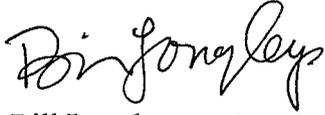
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 cursive script, appearing to read "Bill Longley".

Bill Longley
Assistant Attorney General
Open Records Division

BL/eeg

Ref: ID# 312020

Enc. Submitted documents

c: Mr. Chris Mahon
Brownsville Herald
1135 East Van Buren Street
Brownsville, Texas 78521
(w/o enclosures)