



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 15, 2008

Mr. Michael G. Young  
Assistant General Counsel  
Texas Department of State Health Services  
1100 West 49th Street  
Austin, Texas 78756-3199

OR2008-11180

Dear Mr. Young:

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# 319058.

The Texas Department of State Health Services (the "department") received a request for the name and address of each family planning contractor identified by the department to receive an audit in 2008 as a result of Rider 77, the cost of each audit, and any communications between the department and relevant audit firms pertaining to Rider 77. You state that some information either has been or will be provided to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.116 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.116 of the Government Code provides:

- (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. Rider 77 of House Bill 1 implements the court-ordered requirements for family planning affiliates to comply and therefore maintain their family planning funding. Pursuant to Rider 77, the Executive Commissioner of the Health and Human Services Commission ("Executive Commissioner") or his agent shall conduct an audit of each family planning affiliate to determine if the affiliate has complied with the seven criteria listed in Rider 77, page II-66, Chapter 1428, Acts of the 80<sup>th</sup> Legislature, Regular Session, 2007 (General Appropriations Act). You state that the Executive Commissioner delegated the conduct of these audits to the department and that through its Office of Internal Audit, the department chose to contract with a specified firm to collect and prepare the necessary audit working papers and the final audits required by Rider 77. You explain that portions of the submitted information consist of audit working papers that were obtained or prepared in connection with an audit of the family-planning affiliates at issue to determine if their relationship, if any, with an abortion-services affiliate satisfies the criteria listed in Rider 77. Accordingly, we conclude that the portions of the submitted information you have marked consist of audit working papers under section 552.116(b)(2) and, thus, are excepted from disclosure pursuant to section 552.116 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code

§§ 552.024, .117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state that the employees whose personal information is at issue timely elected to keep their personal information confidential. Accordingly, the department must withhold the personal information you have marked under section 552.117(a)(1) of the Government Code.

In summary, the department may withhold the information you have marked under section 552.116 of the Government Code. The department must withhold the information you have marked under section 552.117(a)(1) of the Government Code. The remaining 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). If the governmental body does not file suit over 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,



Benjamin A. Diener  
Assistant Attorney General  
Open Records Division

BAD/jb

Ref: ID# 319058

Enc. Submitted documents

c: Planned Parenthood  
Attn: Sarah J. Wheat  
VP for Community Affairs  
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Austin, Texas 78704  
(w/o enclosures)