



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 21, 2008

Ms. Julia Gannaway  
Lynn, Pham, & Ross, L.L.P.  
306 West Broadway Avenue  
Fort Worth, Texas 76104

OR2008-16056

Dear Ms. Gannaway:

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# 328897.

The City of Colorado City (the "city"), which you represent, received a request for the city's Annual Financial Report for the fiscal year ending April 30, 2008, including the "Schedule of Findings, Communication with those Charge[d] with Governance, and the Audit Adjustments." You state that you will release the majority of the responsive information. You claim that the remaining information 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, we note, and you acknowledge, that Exhibit C was part of the completed audit report at issue, which is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is expressly public under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). You do not claim that Exhibit C is excepted under section 552.108. Although you raise section 552.116 for this information, section 552.116 is a discretionary exception that protects the governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665

at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, it is not other law that makes information confidential for the purposes of section 552.022. Consequently, you may not withhold Exhibit C on this basis. As you raise no other exception to disclosure of Exhibit C, it must be released to the requestor.

We now address your argument under section 552.116 of the Government Code for Exhibit D. Section 552.116 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. You assert that Exhibit D constitutes an audit working paper prepared or maintained in conducting an audit authorized by Chapter 103 of the Local Government Code and the city's charter. You inform us that the city is required to conduct annual audits pursuant to section 103.001(a) of the Local Government Code and section 31 of the city's Code of Ordinances. *See* Local Gov't Code § 103.001(a) (requiring an annual audit of a municipality's records and accounts). Further, you state that Exhibit D was not

made part of the completed audit at issue. Based on your representations and our review, we agree that Exhibit D constitutes an audit working paper. Accordingly, it may be withheld under section 552.116 of the Government Code.

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,

A handwritten signature in black ink that reads "C. Alvarado". The signature is written in a cursive style with a large, looped initial "C".

Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/ma

Ref: ID# 328897

Enc. Submitted documents

c: Requestor  
(w/o enclosures)