



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2010

Mr. Erik T. Dahler
General Counsel
Alamo Colleges
201 West Sheridan, Building C-8
San Antonio, Texas 78204-1429

OR2010-08040A

Dear Mr. Dahler:

This office issued Open Records Letter No. 2010-08040 (2010) on June 3, 2010. In that ruling, we determined that you failed to comply with the procedures prescribed by section 552.301 of the Government Code in requesting a decision from this office. Accordingly, we determined the requested information must be released. However, you have provided this office with evidence that you did, in fact, comply with the requirements of section 552.301. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on June 3, 2010. *See generally* Gov't Code 552.011 (providing this office may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")).

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# 389707.

The Alamo Colleges (the "college") received a request for (1) documents pertaining to the college's name and logo changes; (2) all district audits for the past five years; (3) a list of college employees and their salaries; (4) and information pertaining to a document titled "FY 2010 STAFFING SUMMARY." You state that the college has provided the requestor with some of the requested information. You claim that the remaining requested information is exempted from disclosure under sections 552.116 and 552.125 of the Government Code.

We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that, among other things, the requestor seeks answers to factual questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the college has made a good faith effort to do so.

You seek to withhold the information at issue under section 552.116 of the Government Code. 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 [required public disclosure under the Act]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [required public disclosure] 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:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

- (A) intra-agency and interagency communications; and
- (B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You inform us that the college is an institution of higher education as defined by Section 61.003 of the Education Code and a junior college district established under Chapter 130 of the Government Code. You state that the college's Internal Audit Department (the "department") reports directly to the college's governing board, which is the board of trustees (the "board") of the college, and by the board's charge conducts five broad types of internal audits. You state that the information at issue consists of drafts of audit reports, and we note that the submitted draft audit report was prepared by the department. However, you have not submitted any comments explaining that the information at issue was prepared or maintained in relation to an audit authorized or required by any of the laws or authorities specified in section 552.116(b)(1). *See id.* § 552.301(e)(1)(A). Therefore, we find you have failed to demonstrate the applicability of section 552.116 to the information at issue. Consequently, the information at issue may not be withheld under this exception to disclosure.

You also argue that portions of some of the draft audit reports at issue, such as the submitted draft report, are excepted from disclosure under section 552.125 of the Government Code. Section 552.125 of the Government Code excepts from disclosure "[a]ny documents or information privileged under the Texas Environmental, Health, and Safety Audit Privilege Act" (the "EHSAP"). Section 5 of the EHSAP provides in part:

- (a) An audit report is privileged as provided in this section.
- (b) Except as provided in Sections 6, 7, and 8 of [the EHSAP], any part of an audit report is privileged and is not admissible as evidence or subject to discovery[.]

V.T.C.S. art. 4447cc, § 5. Section 3 of the EHSAP defines "environmental or health and safety audit" as follows:

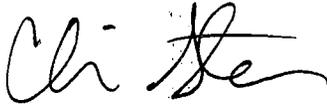
- (3) 'Environmental or health and safety audit' means a systematic voluntary evaluation, review, or assessment of compliance with environmental or health and safety laws or any permit issued under those laws conducted by an owner or operator, an employee of the owner or operator, or an independent contractor of:
 - (A) a regulated facility or operation; or
 - (B) an activity at a regulated facility or operation.

Upon review of the submitted information, we find you have not demonstrated how this draft audit report, relating to a program of study being offered by the college, constitutes an audit report of an environmental health and safety audit for the purposes of the EHSAP. Further, we note that the final audit report, of which you have submitted a draft copy, is publicly available on the college's website.² Consequently, we find that the submitted information is not excepted from disclosure under section 552.125. As you raise no further exceptions to disclosure of the information at issue, it must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 389707

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²See <http://www.alamo.edu/district/ia/pdfs/NVC-Advanced-Water-Treatment-Program-Review-Report-April-2010.pdf>. We note the appendices to the draft audit report you have submitted to this office are not available on the college's website.