



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2010

Ms. Traci S. Briggs
Deputy City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2010-15664

Dear Ms. Briggs:

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# 397154.

The City of Killeen (the "city") received a request for all internal or external audit reports for the EMS billing department from 2004 to the date of the request. You state the city has no external audit reports.¹ You assert the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

You claim the submitted information is not subject to the Act because it is not within the definition of public information found in section 552.022 of the Government Code. However, section 552.022 does not define "public information" for the purposes of the Act. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See Gov't Code* § 552.022. We note "public information," is defined in section 552.002 of the Government Code. Section 552.002(a) provides that "public information" consists of

¹We note 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 (1986).

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987).

You contend the submitted information is not public information because it was not made of, for, or by the city council. However, you state the submitted information was prepared by the city's internal auditor for, and at the request of, the city manager for the city's official business. We note the city is a governmental body as defined by section 552.003. *Id.* § 552.003(1)(A)(iii). Accordingly, we find the submitted information, which is in the physical possession of the city, is maintained by the city in connection with the transaction of official city business. Therefore, the submitted information is subject to the Act and must be released, unless it falls within the scope of an exception to disclosure. *See id.* §§ 552.301, .302.

We note the submitted information is subject to section 552.022 of the Government Code, which provides in relevant part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Id. § 552.022(a)(1). The submitted information consists of a completed internal audit prepared by and for the city. Thus, the submitted information is subject to subsection 552.022(a)(1). You claim this information is excepted from disclosure under section 552.111 of the Government Code. However, this section is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes

of section 552.022. *See id.* § 552.007; Open Records Decision Nos. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.111 is not other law that makes information expressly confidential for the purposes of section 552.022, and the information at issue may not be withheld under that section. As you raise no further exceptions against disclosure of the submitted information, 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 397154

Enc. Submitted documents

c: Requestor
(w/o enclosures)