



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2010

Mr. James G. Nolan
Open Records Attorney
Open Records Division
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711

OR2010-17085

Dear Mr. Nolan:

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# 399722 (CPA ORTS # 6571646758).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for ten categories of information related to the Texas Cosmetology Commission. You state the comptroller has released some of the responsive information to the requestor. You also provide documentation reflecting the comptroller does not have information responsive to some categories of the request.¹ You claim the remaining responsive information, which you have submitted for our review, is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.116 of the Government Code provides:

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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:

(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 the submitted information was prepared and is maintained by the comptroller solely as working papers of post-payment audits of the Texas Cosmetology Commission's state warrant expenditures that were conducted by the comptroller. You explain such audits are authorized by sections 403.011 and 403.071 of the Government Code. *See id.* §§ 403.011 (concerning powers of comptroller to conduct audits of claims against the state); .071(g) ("the comptroller and a state agency may contract in writing for the comptroller to audit claims presented by the state agency after the comptroller prepares warrants or uses the electronic funds transfer system to pay the claims"). Based on your representations and our review of the submitted information, we agree this information constitutes audit working papers and the comptroller may withhold the submitted information under section 552.116 of the Government Code.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 399722

Enc. Submitted documents

c: Requestor
(w/o enclosures)