



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2011

Ms. Mary Ann Slavin
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2011-14150

Dear Ms. Slavin:

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# 431592 (DSHS File 19198/2011).

The Texas Department of State Health Services (the "department") received a request for information pertaining to software compliance audits. You state the department has or will release some of the requested information. You claim that portions of the submitted information are 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 as follows:

- (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, a hospital 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]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [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, the bylaws adopted by or other action of the governing board of a hospital district, 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(b)(2); Act of May 29, 2011, 82nd Leg., R.S., H.B. 2947, §§ 1, 2 (to be codified as amendments to Gov't Code § 552.116(a) and (b)(1)). You state the information at issue constitutes audit working papers pertaining to two software audits conducted under the department's contracts and subscription agreements with two entities. You contend section 12.011 of the Health and Safety Code authorizes the department to conduct an audit. Section 12.011 provides the appropriation, grant, and donation authority of the department and states:

(a) To carry out its duties and functions, the department may apply for, contract for, receive, and spend an appropriation or grant from the state, the federal government, or any other public source, subject to any limitation or condition prescribed by legislative appropriation.

(b) The department may accept donations and contributions to be spent in the interest of public health and the enforcement of public health laws.

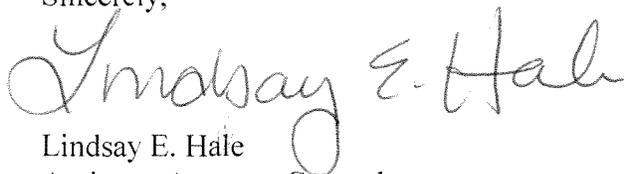
Health & Safety Code § 12.011. Upon review, we find you have failed to demonstrate how section 12.011 authorizes or requires an audit for the purposes of section 552.116(b)(1). *See* Act of May 29, 2011, 82nd Leg., R.S., H.B. 2947, § 2 (to be codified as an amendment to Gov't Code § 552.116(b)(1)) (defining "audit" for the purposes of section 552.116); *see also* Open Records Decision No. 580 (1990) (addressing statutory predecessor to section 552.116). Thus, we find you have not demonstrated that any of the information at issue constitutes audit working papers for the purposes of section 552.116. Accordingly, we

conclude the department may not withhold any of the information at issue under section 552.116 of the Government Code. As you raise no further exceptions to disclosure, we determine the department must release the submitted information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 431592

Enc. Submitted documents

c: Requestor
(w/o enclosures)