



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2012

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703

OR2012-00623

Dear Ms. Janssen:

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# 442141.

The Austin Independent School District (the "district") received a request for four categories of information related to the requestor and a specified audit. You state you do not maintain information responsive to categories two and four of the request.¹ You claim that the submitted 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the district did not comply with the procedural requirements of the Act. The requestor asserts she was not timely notified of the district's request for a ruling from this office as required by section 552.301(d) of the Government Code. Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is

¹In responding to a request for information under the Act, a governmental body is not required to disclose information that did not exist at the time 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).

public. The district states it received the request for information on October 21, 2011. Therefore, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was November 4, 2011. We note the district's request for a decision to the office was timely submitted and reveals it was copied to the requestor. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). Based on the documentation you supplied, we find the district complied with the procedural requirements of section 552.301(d) in copying the requestor on the correspondence requesting this ruling.

Section 552.116 of the Government Code 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, 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 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, 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). You state the submitted information consists of audit working papers prepared or maintained by the district in conducting a compliance audit of the

district's travel expenditures for the 2010-2011 fiscal year. However, the requestor asserts the requested information consists of documents that are not related to the audit at issue and that the "audit is being used to shield documents" from the requestor. As previously noted, this office is unable to resolve disputes of fact in the open records ruling process and must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* ORD 522 at 4. Accordingly, based on your representations and our review, we accept the district's assertion that the submitted information consists of audit working papers prepared or maintained by the district in conducting the audit at issue. The district further states the audit at issue is being conducted by the district's internal auditor as authorized by section 11.170 of the Education Code and the district's board of trustees and in accordance with the auditing standards of the Institute of Internal Auditors. *See* Educ. Code § 11.170 (providing district's board of trustees may select an internal auditor who reports directly to the board). Based on your representations and our review, we agree the submitted information consists of audit working papers as defined in section 552.116(b)(2). Accordingly, the district 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 442141

Enc. Submitted documents

c: Requestor
(w/o enclosures)