



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2012

Mr. Gary Henrichson
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505

OR2012-01678

Dear Mr. Henrichson:

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# 444142 (W006267-110911).

The City of McAllen (the "city") received a request for a specified audit. You claim that the submitted information is excepted from disclosure under section 552.125 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert the submitted information is excepted from disclosure pursuant to section 552.125 of the Government Code. Section 552.125 excepts from disclosure "[a]ny documents or information privileged under the Texas Environmental, Health, and Safety Audit Privilege Act" (the "TEHSAP"). Gov't Code § 552.125. Section 3 of the TEHSAP 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.

V.T.C.S. art. 4447cc, § 3. Section 5 of the TEHSAP, article 4447cc, V.T.C.S., 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 this Act, any part of an audit report is privileged[.]

Id. § 5(a)-(b). Section 6 of the TEHSAP provides in part:

(b) Disclosure of an audit report or any information generated by an environmental or health and safety audit does not waive the privilege established by Section 5 of this Act if the disclosure:

...

(3) is made under a claim of confidentiality to a governmental official or agency by the person for whom the audit report was prepared or by the owner or operator [of a regulated facility or operation].

Id. § 8(b)(3). Section 6 further provides:

(d) Information that is disclosed under Subsection (b)(3) of this section is confidential and is not subject to disclosure under Chapter 552, Government Code. A public entity, public employee, or public official who discloses information in violation of this subsection is subject to any penalty provided in Chapter 552, Government Code.

Id. § 6(d). Section 8 of the TEHSAP provides, however, that “[t]he privilege described in this Act does not apply to . . . a document, communication, datum, or report or other information required by a regulatory agency to be collected, developed, maintained, or reported under a federal or state environmental or health and safety law[.]” *Id.* § 8(a)(1).

You generally assert the submitted information is privileged under the TEHSAP and is therefore excepted from disclosure under section 552.125 of the Government Code. However, you have not provided any explanation demonstrating that any portion of the submitted information constitutes an environmental or health and safety audit, or any information generated by an environmental or health and safety audit. Thus, we conclude you have not established any portion of the submitted information is privileged under section 5 of the TEHSAP. Accordingly, the city may not withhold any of the submitted information under section 552.125 of the Government Code.

We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. As you raise no further exceptions against disclosure, the submitted information must be released; however, any information that is subject to copyright may only be released in accordance with copyright law.

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# 444142

Enc. Submitted documents

c: Requestor
(w/o enclosures)