



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2012

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2012-06953

Dear Ms. Alexander:

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# 453551.

The Texas Department of Transportation (the “department”) received a request for information, including a report summary, related to the investigation of the regional minor equipment inventory for the Brownwood District 23 location. 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 representative sample of information.¹

Initially, you state the department has not completed the audit and so the requested report summary does not exist. We note the Act does not require a governmental body to disclose information that did not exist when the request for information 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 No. 452 at 3 (1986).

Section 552.116 provides as follows:

¹We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(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 [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 body 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. You contend that the information at issue consists of audit working papers that were compiled by the department's internal auditor during the course of an audit authorized under chapter 321 of the Government Code. *See* Transp. Code § 201.108 (Texas Transportation Commission shall appoint internal auditor for department); *see also* Gov't Code §§ 321.0131-.0134 (defining various types of audits), .0136, 2102.007 (relating to duties of the internal auditor). Based on your representations and our review, we agree that the information at issue constitutes audit working papers under section 552.116. Accordingly, the department 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 453551

Enc. Submitted documents

c: Requestor
(w/o enclosures)