



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

June 29, 2012

Ms. Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2012-10094

Dear Ms. Cost:

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# 457766 (PIR# 12-1150).

The Texas Department of Public Safety (the "department") received a request for all e-mails, memoranda, and other communications regarding a named employee during a specified period.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.116 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

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

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<sup>1</sup>You state, and we agree, the requestor modified her request in response to a cost-estimate provided by the department. *See* Gov't Code § 552.263(e-1) (modified request is considered received on the date the governmental body receives the written modification).

<sup>2</sup>Although you raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002).

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. You state portions of the submitted information were used or developed in an investigation of a former employee. You explain this investigation was conducted pursuant to section 411.251 of the Government Code, which authorizes the department's Office of Inspector General to investigate acts of criminal conduct within the department. *See id.* § 411.251. Based on your representations and our review, we find the types of information we have marked constitute audit working papers for purposes of section 552.116. *See id.* § 552.116(b)(2). Accordingly, the department may withhold this information under section 552.116 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information relates to an ongoing criminal investigation and release of

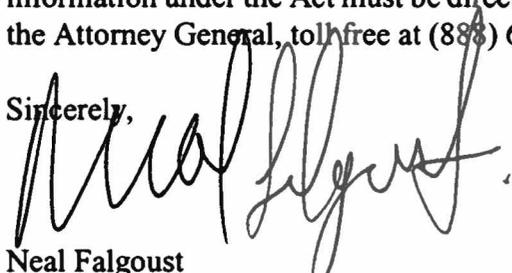
the information would interfere with that investigation and subsequent prosecution. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on your representation and our review, we agree the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

In summary, the department may withhold the information we have marked under section 552.116 of the Government Code. The department may withhold the remaining information under section 552.108(a)(1) 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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 457766

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we do not address your remaining claimed exceptions.