



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2013

Ms. Zeena Angadicheril
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2013-17991

Dear Ms. Angadicheril:

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# 502563 (OGC# 151071).

The University of Texas System (the "system") received a request for all records detailing travel, food, and entertainment related expenses and reimbursements in the possession of the system from the University of Texas Law School Foundation (the "foundation"). You claim the submitted information is excepted from disclosure under section 552.116 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of the foundation. Accordingly, you state, and provide documentation showing, you notified the foundation of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from an attorney for the foundation. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

¹We assume the "representative sample" of information 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 those submitted to this office.

Initially, we address the foundation's contention the submitted information is not subject to the Act. The Act is applicable only to "public information." *See* Act of May 27, 2013, 83rd Leg., R.S., S.B. 1368, § 1 (to be codified as an amendment to Gov't Code § 552.002); Gov't Code § 552.021. Section 552.002(a) defines "public information" as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Act of May 27, 2013, 83rd Leg., R.S., S.B. 1368, § 1 (to be codified as an amendment to Gov't Code § 552.002). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and, thus, is subject to the Act. *Id.*; *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). We note information that is collected, assembled, and maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988). The foundation contends the submitted information is not subject to the Act because the foundation is not a governmental body. We note, however, the system states the submitted information was obtained from the foundation in furtherance of an audit conducted by the system. Accordingly, we find this information was collected, assembled, or maintained in connection with the transaction of the system's official business. Further, the system has submitted this information as being subject to the Act. Therefore, we conclude the submitted information is subject to the Act and must be released, unless the foundation or the system demonstrates the information falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302.

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.

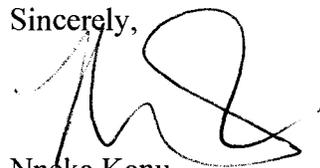
Id. § 552.116. You state the system is an institution of higher education as defined by section 61.003 of the Education Code. You contend the submitted information was obtained by the foundation in furtherance of an audit conducted by the system related to financial management and accountability for the use of donor funds in support of the School of Law at The University of Texas. You inform us audits such as this are authorized by the Texas Internal Auditing Act, chapter 2102 of the Texas Government Code. *See id.* §§ 2102.003 (defining types of audits), .005 (requiring state agencies to conduct internal audits), .007 (relating to duties of internal auditor). 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 system may withhold the submitted information under section 552.116 of the Government Code.²

²As our ruling is dispositive, we need not address the foundation's remaining argument against disclosure of this 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 502563

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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