



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2013

Mr. Jeffrey W. Giles
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2013-21608

Dear Mr. Giles:

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# 508413 (GC Nos. 20862 and 20990).

The City of Houston (the "city") received two requests from the same requestor for the audit firm annual internal control letters to the city for fiscal years 2002 to 2012 and the audit firm annual internal control letters to the city for fiscal years 2003 to 2012. You state the city's controller's office does not have responsive information dated prior to 2003.¹ You claim the submitted information is excepted from disclosure under sections 552.111 and 552.116 of the Government Code. 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,

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 [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 Exhibit 2 consists of working papers made by an outside auditing firm retained by the city. You also inform us the city's audit is authorized by section 103.001(a) of the Local Government Code. *See* Local Gov't Code § 103.001(1) (requiring an annual audit of a municipality's records and accounts). You further state that these audit working papers are used by the city in preparation for the release of the city's comprehensive annual financial report ("CAFR"). You state the CAFR is released to the public in its final form and includes the findings of the outside consultant contained in Exhibit 2. Based on your representations and our review, we conclude Exhibit 2 is an audit working paper that was prepared or maintained by the city auditor in conducting an audit authorized or required by a statute of this state. *See* Gov't Code § 552.116(a), (b)(1), (b)(2). Accordingly, the city may withhold Exhibit 2 under section 552.116 of the Government Code.²

²As our ruling is dispositive, we need not address your 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,

A handwritten signature in black ink that reads "Paige Thompson". The signature is written in a cursive style with a large, looping "P" and "T".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 508413

Enc. Submitted documents

c: Requestor
(w/o enclosures)