



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2014

Ms. Shannon Barrentine
Interim Executive Director
Paris Economic Development Corporation
1125 Banham Street
Paris, Texas 75460

OR2014-17683

Dear Ms. Barrentine:

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# 538237.

The Paris Economic Development Corporation (the "corporation") received two requests from the same requestor for all information and e-mails, including attachments, sent to and from Defenbaugh & Associates ("Defenbaugh") and the corporation.¹ You state you will release most of the information to the requestor. You state the corporation will redact certain information in accordance with section 552.130 of the Government Code.² You claim 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 information.

Section 552.116 of the Government Code provides,

¹You inform us the corporation required the requestor to make a deposit for payment of anticipated costs under section 552.263 of the Government Code, which the corporation received on July 22, 2014. *See* Gov't Code § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130 without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d),(e).

(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 [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 assert the submitted information pertains to a formal audit conducted by Defenbaugh of the corporation's accounts. You state the corporation is a non-profit economic development corporation governed by a five person Board of Directors appointed by the Paris City Council. You state the Paris City Council passed a motion asking the corporation to hire an outside company to conduct the audits under City Charter, article III, section 34, which states the council has the power to inquire into the "conduct of any office, department, agency, or officer of the city and to make investigations as to municipal affairs." You further state article 6 of the corporation's Articles of Incorporation stipulates that "[t]he Corporation's internal affairs should be regulated by a set of Bylaws not inconsistent with the law of the State of Texas, which have been approved by the City Council of the City of Paris, Texas under whose auspices the corporation is created." Thus, you state the City of Paris had the authority to order such a forensic audit or investigation under City Charter, article III, section 34. However, section 552.116 is intended to protect the auditor's interests. The submitted information is maintained by the corporation, who we

understand is the auditee in this instance. As the auditee, the corporation cannot assert section 552.116 in order to protect its own interest in withholding the information. Thus, section 552.116 is not applicable, and the corporation may not withhold any of the submitted information under section 552.116 of the Government Code.

The corporation has redacted some information pursuant to section 552.136(c) of the Government Code.³ We note the submitted documents contain additional information subject to section 552.136. Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b). An access device number is one that may be used to 1) obtain money, goods, services, or another thing of value, or 2) initiate a transfer of funds other than a transfer originated solely by a paper instrument, and includes an account number. *See id.* § 552.136(a) (defining “access device”). Upon review, we find the corporation must withhold the information we have marked under section 552.136 of the Government Code.

The corporation has redacted some e-mail addresses subject to section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).⁴ The submitted information contains additional e-mail addresses subject to section 552.137. Section 552.137 of the Government Code exempts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not within the scope of section 552.137(c). Accordingly, the corporation must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release.

In summary, the corporation must withhold the information we have marked under section 552.136 of the Government Code. The corporation must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release. The remaining information must be released.

³Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

⁴Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public, under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion. *See* ORD 684.

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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 538237

Enc. Submitted documents

c: Requestor
(w/o enclosures)