



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 7, 2016

Mr. Micah King  
Assistant City Attorney  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-8828

OR2016-24802

Dear Mr. King:

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# 633357.

The City of Austin (the "city") received a request for (1) documents previously requested by a different requestor, (2) two personnel files, and (3) complaints, reports, and findings pertaining to two named individuals during a specified time period. 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.

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-15737 (2016). In Open Records Letter No. 2016-15737, we determined, with the exception of the adequate summary, which the city stated it had released, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), and the remaining information must be released. Accordingly, to the extent the requested information is identical to the information at issue in that ruling, we conclude the city must rely on Open Records Letter No. 2016-15737 as a previous determination. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address your arguments against the disclosure of the submitted information that is not subject to this prior ruling.

We note the city has only submitted information pertaining to category three of the request. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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, 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 the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 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, 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 the submitted information consists of audit working papers created or utilized by the city auditor during an audit of a city employee. You also state the audit was conducted under the authority granted by section 2-3-5 of the Austin City Code. Based on your representations and our review, we find you have demonstrated the remaining information was prepared or maintained by the city auditor in conducting an audit authorized

or required by an ordinance of the city. *See id.* Accordingly, the city may withhold the submitted information under section 552.116 of the Government Code.

In summary, to the extent that some of the information is identical to the information at issue in Open Records Letter No. 2016-15737, the city must continue to rely on that ruling as a previous determination. The city 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Kaelan A. Henze  
Assistant Attorney General  
Open Records Division

KAH/eb

Ref: ID# 633357

Enc. Submitted documents

c: Requestor  
(w/o enclosures)