



August 26, 2000

Ms. Janice Marie Wilson
Associate General Counsel
Texas Department Of Transportation
125 East 11th Street Dewitt C. Greer State Bldg
Austin, Texas 78701-2483

OR2000-3707

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139353.

The Texas Department of Transportation (the "department") received a request for "all back up documents used to prepare the 'audit' which was produced to us yesterday." You claim that the requested 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, Exhibits C and D.

Initially, we note that portions of Exhibit D contain information that is made expressly public by section 552.022(a)(15) of the Government Code. Section 552.022(a)(15) provides that information regarded as open to the public under an agency's policies is public information and not excepted from required disclosure unless it is expressly confidential under other law. Exhibit D contains information posted on the department's web site. It appears to be the department's policy that this information be public. You have not indicated, nor are we aware of, any other law that would make this information confidential. Section 552.116 of the Government Code is a discretionary exception under the Public Information Act (the "Act") and does not constitute "other law" for purposes of section 552.022.¹ Therefore, we

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests

find that the information available to the public on the department's website is public information under section 552.022(a)(15). Accordingly, the department must release this marked information in its entirety to the requestor.

Next, the submitted documents include information from the Texas Administrative Code. Copies of these rules are also subject to required public disclosure. Gov't Code §§ 552.022(a)(10), (15), *see* Open Records Decision No. 551 (1990) (the law is free for publication to all).

Section 552.116 of the Government Code, as amended by the Seventy-sixth Legislature, provides in relevant part:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, 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 [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 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. After reviewing your arguments and the submitted exhibits, we find that the entirety of Exhibit C and portions of Exhibit D fall within the purview of section 552.116 of the Government Code. Consequently, the department may withhold from required public disclosure under section 552.116 Exhibit C in its entirety and portions of Exhibit D.

of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

In summary, the department must release the information subject to required public disclosure under section 552.022. Pursuant to section 552.116, the department may withhold from disclosure Exhibit C in its entirety and the portions of Exhibit D not subject to section 552.022.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

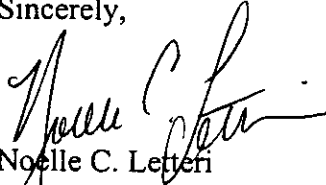
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Noelle C. Lettini
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 139353

Encl. Submitted documents

cc: Mr. Wayne Dolcefino
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(w/o enclosures)