



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 2, 2019

Mr. William Broocks
Counsel for Karnes County
Russell Rodriguez Hyde Bullock LLP
1633 Williams Drive, Building 2, Suite 200
Georgetown, Texas 78628

OR2019-00061

Dear Mr. Broocks:

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# 744319.

The Karnes County Auditor's Office (the "county auditor's office"), which you represent, received a request for information documenting the county auditor's office's completion of specified auditing procedures during a period of time, as well as specified audit reports. You claim the submitted information is excepted from disclosure under sections 552.101, 552.116, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the county auditor's office received the present request. This ruling does not address the public availability of any information that is not responsive to the request and the county auditor's

¹We assume the "representative sample" of records 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 that submitted to this office.

office is not required to release such information in response to this request.² *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

Next, we note some of the submitted responsive information is subject to section 552.022 of the Government Code. Section 552.022 provides, in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted responsive information contains a completed audit report that is subject to section 552.022(a)(1). The county auditor's office must release the information at issue unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* You seek to withhold the information at issue under sections 552.116 and 552.136 of the Government Code. However, section 552.116 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, you may not withhold the information subject to section 552.022(a)(1) of the Government Code, which we have marked, under section 552.116 of the Government Code. However, as section 552.136 of the Government Code makes information confidential under the Act, we will consider the applicability of this exception to the information at issue. Further, we will address your argument under section 552.116 for the responsive information not subject to section 552.022.

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].

²As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

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 remaining information consists of audit working papers maintained by the county auditor’s office in preparation of regular audits of Karnes County. *See* Local Gov’t Code §§ 115.001(1), .035 (relating to the duties of the county auditor). You further state the information at issue is used by the county auditor’s office to conduct statutorily authorized audits. *See id.* § 115.022(b) (requiring county auditor to verify the correctness of books and reports); *see also id.* § 115.042 (regarding authority to conduct audit). Based on your representations and our review, we agree the information at issue constitutes audit working papers. Accordingly, the county auditor’s office may withhold the information not subject to section 552.022(a)(1) of the Government Code under section 552.116 of the Government Code.³

Section 552.136(b) 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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the county auditor’s office must withhold the account numbers we marked in the information subject to section 552.022 of the Government Code under section 552.136 of the Government Code.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

However, upon review, we find you have not explained the remaining information you marked consists of a credit card, debit card, or charge card number, or is an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find the county auditor's office failed to demonstrate the applicability of section 552.136 of the Government Code to the remaining information at issue, and the county auditor's office may not withhold it on that basis.

In summary, the county auditor's office must release the completed audit report we marked pursuant to section 552.022(a)(1) of the Government Code; however, in releasing this information, the county auditor's office must withhold the account numbers we marked under section 552.136 of the Government Code. The county auditor's office may withhold the remaining responsive 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, 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,



Amy Shipp
Assistant Attorney General
Open Records Division

ALS/eb

Ref: ID# 744319

Enc. Submitted documents

c: Requestor
(w/o enclosures)