



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 3, 2022

Ms. Sarah Parker
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2022-12580

Dear Ms. Parker:

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# 945270 (Ref. Nos. R011210-020822 and R011371-021422).

The Texas Department of Transportation (the "department") received two requests from the same requestor for (1) all complaints involving a named entity or a named individual during a specified time period, and (2) information considered in a specified determination. The department states it will release some information. The department claims the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.116 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

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]. If information in an audit working paper is also

¹ We 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.

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. The department states the submitted information consists of audit working papers prepared by the department’s internal auditors during an investigation audit into specified acts and allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt, or use of state funds. The department informs us the audit was authorized by chapters 321 and 2102 of the Government Code. *See* Transp. Code § 201.108 (Texas Transportation Commission shall appoint internal auditor for department); *see also* Gov’t Code §§ 321.0131-.0134 (defining various types of audits), .0136, 2102.003 (defining types of audits), .005 (requiring state agencies to conduct internal audits), .007 (relating to duties of internal auditor). Based upon these representations and our review, we agree the submitted information constitutes audit working papers. Accordingly, the department may withhold the submitted information under section 552.116 of the Government Code.²

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open

² As our ruling is dispositive, we need not address the department’s remaining arguments against disclosure of the submitted information.

Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/mo

Ref: ID# 945270

Enc. Submitted documents

c: Requestor
(w/o enclosures)