



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 12, 2022

Ms. Hannah Bell
Assistant Criminal District Attorney
Tarrant County Criminal District Attorney's Office
401 West Belknap Street, 9th Floor
Fort Worth, Texas 76196

OR2022-27746

Dear Ms. Bell:

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# 968240 (SOS File No. 22-06-0825).

The Tarrant County District Attorney's Office (the "district attorney's office") received two requests from the same requestor for communications with the Office of Texas Secretary of State (the "secretary's office") pertaining to a specified audit and all documents and information provided by Tarrant County to the secretary's office in relation to the specified audit. You claim the submitted information is excepted from disclosure under sections 552.101, 552.116, and 552.139 of the Government Code. You also state the district attorney's office notified the secretary's office of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304. We have received comments from the secretary's office. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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.

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 that those records contain substantially different types of information than that submitted to this office.

2022-21185 (2022). In that ruling, we concluded the following: (1) the Tarrant County Elections Administration (the “administration”), which was represented by the district attorney’s office, must continue to rely on Open Records Letter Nos. 2022-00263 (2022) and 2022-12285 (2022) as previous determinations and withhold or release any identical information in accordance with those rulings; (2) the administration may withhold certain information under section 552.107(1) of the Government Code; (3) the administration may withhold certain information we marked under section 552.116 of the Government Code on behalf of the secretary’s office; (4) the administration must withhold certain information we marked under section 552.139 of the Government Code; (5) to the extent the individual whose information is at issue is a current or former administration employee or official who timely requested confidentiality under section 552.024 of the Government Code, the administration must withhold certain information we marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service; (6) to the extent the e-mail addresses within the remaining information at issue are not the personal e-mail addresses of administration employees or officials and subsection (c) does not apply, the administration must withhold this information under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release; and (7) the administration must release the remaining information. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the district attorney’s office must continue to rely on Open Records Letter No. 2022-21185 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, the district attorney’s office asserts some of the submitted information is not subject to the Act. Section 552.002(a) of the Government Code defines “public information” as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information;or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. The district attorney's office indicates the file names, links, usernames, passwords, IP addresses, and port numbers it marked have no significance other than their use as tools for the maintenance, manipulation, or protection of public information. Based on these representations and our review, we find this information does not constitute public information under section 552.002 of the Government Code. Therefore, we conclude the marked information is not subject to the Act and need not be released to the requestor.²

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 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:

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

- (A) intra-agency and interagency communications; and
- (B) drafts of the audit report or portions of those drafts.

Id. § 552.116. The district attorney’s office seeks to withhold the information at issue under section 552.116 of the Government Code. However, the purpose of section 552.116 is to protect the auditor, not the auditee. As the auditee, the district attorney’s office may not assert section 552.116 to protect its own interests in withholding information from disclosure. However, we have received arguments from the secretary’s office, as the auditor, to withhold the remaining information at issue. The secretary’s office states the remaining information consists of audit working papers maintained by the secretary’s office. The secretary’s office informs us the audit was undertaken pursuant to sections 31.003, 31.004, and 31.005 of the Election Code, section 405.017(6) of the Government Code, and the order of the Governor of Texas. *See* Elec. Code §§ 31.003 (the secretary’s office “shall obtain and maintain uniformity in the application, operation, and interpretation of” the Election Code), .004(a) (the secretary’s office “shall assist and advise all election authorities with regard to the application, operation, and interpretation of [the Election Code] and of the election laws outside [the Election Code]”), .005(a) (the secretary’s office “may take appropriate action to protect the voting rights of the citizens of this state from abuse by the authorities administering the state’s electoral processes”); Gov’t Code § 405.017(6) (the secretary’s office shall “perform such other and further duties as may be directed by the governor”). Based on these representations and our review, we agree the information at issue consists of audit working papers for purposes of section 552.116. Accordingly, the district attorney’s office may withhold the remaining information under section 552.116 of the Government Code on behalf of the secretary’s office.³

In summary, the district attorney’s office must continue to rely on Open Records Letter No. 2022-21185 as a previous determination and withhold or release the information at issue in accordance with that ruling. The marked information is not subject to the Act and need not be released to the requestor pursuant to section 552.002 of the Government Code. The district attorney’s office may withhold the remaining information under section 552.116 of the Government Code on behalf of the secretary’s office.

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 Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

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

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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jm

Ref: ID# 968240

Enc. Submitted documents

c: Requestor
(w/o enclosures)