



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 6, 2022

Mr. Adam Bitter
General Counsel
Office of the Texas Secretary of State
P.O. Box 12887
Austin, Texas 78711-2887

OR2022-37690

Dear Mr. Bitter:

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# 989629 (SOS PIR No. 22-0741).

The Office of the Texas Secretary of State (the "secretary's office") received a request for information pertaining to an ongoing audit.¹ The secretary's office states it released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.107, 552.111, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

The secretary's office asserts some of the responsive information is not subject to the Act. Section 552.002(a) of the Government Code defines "public information" as information

¹ We note the secretary's office asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² 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.

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 secretary's office states the file names, network file locations, and other computer program information it highlighted has 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 highlighted information is not subject to the Act and need not be released to the requestor.

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:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Id. § 552.116. 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 secretary’s office may withhold the remaining information under section 552.116 of the Government Code.³

In summary, the highlighted 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 secretary’s office may withhold the remaining 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.

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

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 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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/mo

Ref: ID# 989629

Enc. Submitted documents

c: Requestor
(w/o enclosures)