



125 EAST 11TH STREET, AUSTIN, TEXAS 78701-2483 | 512.463.8630 | FAX: 512.475.3070 | WWW.TXDOT.GOV

July 12, 2022

Bernadette Feazell
MuckRock News
263 Huntington Ave.
Boston, MA 02115
130833-50805040@requests.muckrock.com

Re: Public Information Act Request of Bernadette Feazell, Dated June 28, 2022, and Received by the Texas Department of Transportation on June 29, 2022 (R015563-062822)

Dear Bernadette Feazell:

Please be advised that we have filed a request for an opinion with the Office of the Attorney General regarding your request for information. The Attorney General should copy you on their opinion. The Attorney General usually issues an opinion within 45 business days.

Sincerely,

DocuSigned by:

Dionne Barner

BDCF24F15D094E7...

Dionne Barner

Associate General Counsel

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July 12, 2022

Mr. Justin Gordon, Chief
Open Records Division
Office of the Attorney General
300 W. 15th Street, 11th Floor
Austin, TX 78701

Interagency Mail

RE: Public Information Act Request of Bernadette Feazell, Dated June 28, 2022, and Received by the Texas Department of Transportation on June 29, 2022 (R015563-062822)

Dear Mr. Gordon:

On June 29, 2022, the Texas Department of Transportation (TxDOT) received a Public Information Act request from Bernadette Feazell requesting records related to a specified investigation. The request is enclosed as **Exhibit A**, and in accordance with Section 552.301 of the Government Code, TxDOT is seeking a ruling on the request. A representative sample of the excepted information is enclosed as **Exhibit B**. TxDOT has made some of the requested information available.

Audit working papers are excepted from disclosure.

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 the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 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

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Mr. Justin Gordon

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

Gov't Code § 552.116. **Exhibit B** is excepted from disclosure in its entirety because it consists of audit working papers that relate to an audit authorized by state law and performed by internal TxDOT auditors. TxDOT internal auditors and audits are authorized by Section 201.108 of the Transportation Code, as well as by Chapters 321 and 2102 of the Government Code. Section 552.116 includes any audit authorized by statute, including an investigation. The subject audit is an investigation audit, which is an inquiry into specified acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt, or use of state funds, or into specified financial transactions or practices that may involve such impropriety, malfeasance, or nonfeasance. See *id.* § 321.0136. The information at issue was compiled during the course of the formal TxDOT audit by the TxDOT's internal auditors. Your office has often found that Section 552.116 covers audit working papers compiled by TxDOT auditors in the course of internal audits. See, e.g., Open Records Letter Nos. 2014-11072 (2014), 2014-07507 (2014), 2013-10878 (2013), 2013-07049 (2013) 2013-05051 (2013). Therefore, **Exhibit B** should be withheld its entirety under Section 552.116 of the Government Code as audit working papers.

Summary and Conclusion.

In accordance with Section 552.301(d)(1) of the Government Code, TxDOT has notified the requestor that it wishes to withhold the excepted information and is seeking an attorney general ruling. TxDOT has also sent a copy of this letter to the requestor in accordance with Section 552.301(d)(2). In this case, **Exhibit B** should be withheld for all of the above reasons.

Sincerely,

DocuSigned by:

BDCF24F15D094E7...
DIONNE BARRIER

Associate General Counsel

Enclosures

cc: Bernadette Feazell
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Boston, MA 02115
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(without enclosures)