OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 30, 2001

Ms. Tracy B. Calabrese
Senior Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-4963

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154099.

The City of Houston (the "city") received a request to review the city's property damage and flood insurance policies with policy periods encompassing June 2001. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered your arguments and those of the requestor, and reviewed the submitted information.

We begin by finding that the information at issue is subject to section 552.022. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. The information at issue fits into the subsection (3) category for "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body." We will consider whether other law makes the policies confidential.

You argue that the policies are protected from disclosure under section 101.104 of the Texas Civil Practice and Remedies Code, which provides as follows:

> (a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under [the Texas Tort Claims Act].
>
> (b) Neither the existence nor the amount of the insurance is subject to discovery.

Tex. Civ. Prac. & Rem. Code § 101.104; *see In re Sabine Valley Center*, 986 S.W.2d 612 (Tex. 1999) (statute "prohibits discovery of insurance covering claims against a governmental unit and against its employees for which it could be liable, directly or vicariously, under the [Texas Tort Claims] Act"). We believe this discovery provision applies to the requested insurance policies. Furthermore, section 101.104 of the Texas Civil Practice and Remedies Code consists of other law for purposes of section 552.022(a) of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Therefore, we conclude that the city must withhold the requested insurance policies from the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 154099

Enc: Submitted documents

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