



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2005

Ms. Noelle Letteri
Staff Attorney
Texas General Land Office
P. O. Box 12873
Austin, Texas 78701-1495

OR2005-07620

Dear Ms. Letteri:

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# 230817.

The Texas General Land Office (the "GLO") received a request for several categories of information regarding two named entities and concerning information about leases, and delinquent or unpaid royalties. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially we note that portions of the submitted information are subject to section 552.022 of the Government Code, which provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

Gov't Code § 552.022(a)(1), (3). Some of the submitted documents are completed reports, vouchers, and contracts relating to the receipt of funds by the GLO. Pursuant to section 552.022, this information is required to be released unless it is expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception that protects the interests of a governmental body as distinct from exceptions intended to protect the interests of third parties or information deemed confidential by law. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Thus, this exception does not constitute other law that makes information confidential for purposes of section 552.022. Accordingly, the completed reports, vouchers, and contracts, as well as their attachments are not excepted under section 552.103 of the Government Code and must be released.

We note, however, that the vouchers contain account numbers. Section 552.136 of the Government Code provides:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked the account numbers that must be withheld pursuant to section 552.136 of the Government Code.

Additionally, one of the vouchers contains an e-mail address. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The types of e-mail addresses excluded by subsection (c) include an e-mail address that is “provided to a governmental body by a person who has a contractual relationship with the governmental body. . . .” Gov't Code § 552.137(c)(1). Thus, if the GLO has a contractual relationship with the company for whom the owner of the e-mail address works, the e-mail address must

be released. However, if the GLO does not have a contractual relationship with this company and the individual whose e-mail address is at issue did not consent to its release, the GLO must withhold the e-mail address in accordance with section 552.137 of the Government Code.

Now we turn to your argument for the information not subject to section 552.022 of the Government Code. Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The GLO has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The GLO must meet both prongs of this test for information to be excepted under 552.103(a).

You state and provide documentation showing that a lawsuit was filed against the GLO on June 2, 2005. You have also explained how the remaining information relates to the pending litigation for the purposes of section 552.103. We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Here, the opposing party has seen or had access to some of the responsive documents. Accordingly, to the extent that this information has been seen by the opposing party in the litigation, it is not excepted from disclosure under section 552.103(a), and it must be disclosed. However, to the extent that this information

has not been seen by the opposing party, it may be withheld from disclosure under section 552.103(a).¹

In summary, the marked account numbers must be withheld under section 552.136 of the Government Code. If the GLO has a contractual relationship with the company for whom the owner of the e-mail address works, the e-mail address must be released. However, if the GLO does not have a contractual relationship with this company and the individual whose e-mail address is at issue did not consent to its release, the GLO must withhold the marked e-mail address under section 552.137 of the Government Code. The remaining information subject to section 552.022 must be released. With the exception of information previously seen by the opposing party, the GLO may withhold the remaining information under section 552.103 of the Government Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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

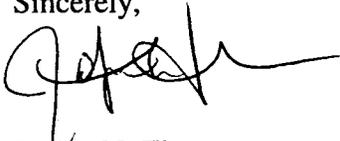
¹Further, the applicability of section 552.103(a) ends once the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

body. *Id.* § 552.321(a); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 230817

Enc. Submitted documents

c: Ronald Del Ventro
Assistant Attorney General
Bankruptcy & Collections Division
300 West 15th St. 8th Fl.
Austin, Texas 78711
(w/o enclosures)