



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 17, 2007

Mr. Michael Rodriguez  
Brownsville Convention & Visitors Bureau  
650 FM 802  
Brownsville, Texas 78520

OR2007-10631

Dear Mr. Rodriguez:

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# 286893.

The Brownsville Convention and Visitors Bureau (the "bureau") received a request for copies of credit card charges incurred by the bureau for the 2005, 2006, and 2007 calendar years. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you state that the bureau cannot produce the requested information because it has either been turned over to the Brownsville Police Department (the "department"), is being obtained by the department, or is in the process of being obtained by the bureau for production to the department. The Act is applicable to "public information." *See* Gov't Code § 552.021. "Public information" is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

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<sup>1</sup>We assume that 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.

*Id.* § 552.002(a). Thus, virtually all information in the physical possession of a governmental body is public information that is encompassed by the Act. *Id.* § 552.022(a); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Likewise, the Act is applicable to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for a governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see also* Open Records Decision No. 462 at 4 (1987). Conversely, the Act does not require a governmental body to release information if the governmental body that receives the request has neither possession of the information nor a right of access to it. *See* Open Records Decision Nos. 534 at 2-3 (1989), 518 at 2-3 (1989). While we accept your representation that the bureau may not currently be in possession of the entirety of the requested information, we note that responsive information was in existence at the time of the request and the bureau had a right of access to it at that time. Furthermore, we note that the bureau has submitted a representative sample of responsive information for our review. Thus, we will address your arguments against disclosure.

Next, we note that the requested information is subject to section 552.022 of the Government Code. Section 552.022 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:

...

(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)(3). The requested information consists of copies of credit card charges incurred by the bureau and is subject to section 552.022(a)(3). Therefore, the bureau may only withhold these documents if they are confidential under "other law." Sections 552.103 and 552.108 are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App. – Dallas 1999, no pet.) (section 552.103 may be waived); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, sections 552.103 and 552.108 are not other law that makes information expressly confidential for the purposes of section 552.022 and thus none of the information may be withheld on these bases.

The requested information contains information subject to section 552.117.<sup>2</sup> Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the bureau may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. *Accordingly, if the employee whose information is at issue timely elected to keep his personal information confidential, the bureau must withhold the information we have marked under section 552.117(a)(1). The bureau may not withhold the information we have marked under section 552.117(a)(1) if the employee did not timely elect to keep his information confidential.*

Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. Therefore, the bureau must withhold the Texas motor vehicle record information we have marked under section 552.130.

Section 552.136(b) states that “[n]otwithstanding 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. Thus, the bureau must withhold the information that we have marked under section 552.136.

In summary, the bureau must withhold the information we have marked subject to section 552.117 if the employee timely elected to keep his personal information confidential. The bureau must withhold the Texas motor vehicle record information that we have marked subject to section 552.130. The department must withhold the information we have marked under section 552.136. The remaining information must be released.

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*

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 body. *Id.* § 552.321(a); *Texas 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 Office of the Attorney General 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,



Loan Hong-Turney  
Assistant Attorney General  
Open Records Division

LH/jb

Ref: ID# 286893

Enc. Submitted documents

c: Ms. Emma Perez-Trevino  
Brownsville Herald  
c/o Michael Rodriguez  
Brownsville Convention & Visitors Bureau  
650 FM 802  
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(w/o enclosures)