



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 14, 2007

Mr. Ray Stelly  
Polk County Auditor  
602 East Church Street  
Livingston, Texas 77351

OR2007-15006

Dear Mr. Stelly:

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# 294663.

The Polk County Auditor (the "auditor") received a request for expenditures relating to the 2002 trial of a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 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> We have also considered comments submitted by the requestor. *See Gov't Code* § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the auditor is in violation of the procedural requirements of the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(a), (b). You state that the auditor received the present request on September 7, 2007. The

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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.

requestor, however, contends that he made the present request on June 5, 2007, and was told that the information was being gathered. The date on which a governmental body received a request for information is a fact issue. This office is unable to make factual determinations or resolve factual disputes in the ruling process. *See* Attorney General Opinions GA-0087 at 1 (2003), GA-0003 at 1 n. 2 (2003), JC-0534 at 1 (2002) (this office does not make factual determinations in opinion process). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Based on the submitted information, we find that the auditor complied with the procedural requirements of section 552.301 in requesting this ruling. Accordingly, we will address the auditor's arguments against disclosure.

Next, we note that the requested information is subject to section 552.022 of the Government Code, which provides in pertinent part as follows:

(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 invoices and payment vouchers, which are made public under section 552.022(a)(3). Consequently, unless this information is made expressly confidential under other law, it must be released. You claim the requested information may be withheld under sections 552.101, 552.103, and 552.108 Government Code, and article 39.14 of the Code of Criminal Procedure. However, sections 552.103 and 552.108 are discretionary exceptions that protect a governmental body's interests and are therefore not "other law" for purposes of section 552.022(a)(3). *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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103), 586 (1991) (governmental body may waive section 552.108). Consequently, the auditor may not withhold the requested information pursuant to section 552.103 or section 552.108. You also raise article 39.14 of the Code of Criminal Procedure. Article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. Article 39.14 does not expressly make information confidential. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Thus,

the requested information may not be withheld pursuant to article 39.14. However, because information subject to section 552.022(a)(3) may be withheld under section 552.101, we will address the applicability of this exception to the requested information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You seek to withhold the requested information under section 552.101 of the Government Code in conjunction with the ruling in *Ake v. Oklahoma*, 470 U.S. 68 (1985). In *Ake*, the U. S. Supreme Court held

that when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense.

*Ake*, 470 U.S. at 83. You claim that the ruling in *Ake* “provides that information regarding payments for defense services for an indigent defendant, such as [the named individual], are to remain confidential.” Upon review, however, we find that the *Ake* decision did not address the confidentiality of records pertaining to a state providing defense services to an indigent defendant. *Ake*, 470 U.S. 68. Therefore, because *Ake* does not make information confidential for purposes of the Act, the requested information may not be withheld on that basis.

Finally, we note that the requested information includes information subject to section 552.136 of the Government Code.<sup>2</sup> 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 auditor must withhold the information that we have marked under section 552.136 of the Government Code. 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 from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the

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

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).

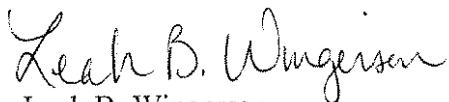
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 294663

Enc. Submitted documents

c: Mr. J. Neil Hartley  
Gulf Region Advocacy Center  
2307 Union Street  
Houston, Texas 77007-6129  
(w/o enclosures)