



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2009

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2009-01684

Dear Ms. Sims:

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# 334229.

The City of Lubbock (the "city") received a request for the investigation report regarding a claim against the city by the requestor's client. You claim the submitted e-mails, letters, and photographs pertaining to the investigation are excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information was created after the date the request for information was received by the city. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, we note the submitted responsive information is subject to section 552.022(a)(1) of the Government Code, which provides:

¹Although you raise section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you have withdrawn your claim under this exception. See Gov't Code §§ 552.301, .302.

the following categories of information are public information and not excepted from required disclosure under [the Act] unless they are expressly confidential under other law:

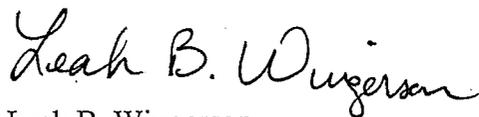
(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information is part of a completed investigation, which must be released under section 552.022(a)(1), unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *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. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold the submitted responsive investigation information under section 552.103 of the Government Code. As you have claimed no other exceptions to disclosure, the submitted responsive information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/cc

Ref: ID# 334229

Enc. Submitted documents

cc: Requestor
(w/o enclosures)