



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 26, 2010

Mr. Ronald J. Bounds  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469

OR2010-07643

Dear Mr. Bounds:

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# 380930.

The City of Corpus Christi (the "city") received a request for the following four categories of information: (1) documents regarding the design or construction of the Wood River Lift Station (the "station"); (2) records regarding maintenance and upkeep of the station; (3) reports regarding a specified May 21, 2009 incident at the station; and (4) documents containing city preventive maintenance schedules, protocols, and procedures for any city lift stations. You state the city will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested third party may submit comments stating why information should or should not be released).

First, we note the submitted documents include information that is subject to section 552.022 of the Government Code, which provides in pertinent 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[.]

*Id.* § 552.022(a)(1), (3). The submitted information contains two completed reports, a Patient Care Report and a CIP Weekly Report, that are subject to section 552.022(a)(1). The submitted information also includes performance bond and insurance documents that are executed agreements pertaining to the receipt of funds by the city, and are therefore subject to section 552.022(a)(3). The city may only withhold these documents if they are made confidential under "other law." Although you argue the CIP Weekly Report and performance bond and insurance documents are excepted from disclosure under section 552.103 of the Government Code, this section is a discretionary exception and, as such, is not "other law" for purposes of section 552.022. *See* Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver). Therefore, the CIP Weekly Report and performance bond and insurance documents we have marked may not be withheld under section 552.103 and generally must be released to the requestor. However, the insurance documents contain insurance policy numbers that are subject to section 552.136 of the Government Code, which is "other law" for purposes of section 552.022.<sup>1</sup> Additionally, you claim the Patient Care Report is confidential under section 552.101 of the Government Code, which is also "other law" for purposes of section 552.022. Thus, we will next consider the public availability of the insurance policy numbers and whether the Patient Care report must be withheld under section 552.101.

Section 552.136(b) states that "[n]otwithstanding any other provision of [the Act], 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(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are "access device" numbers for purposes of section 552.136. Therefore, the city

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

must withhold the insurance policy number we marked under section 552.136 of the Government Code.<sup>2</sup>

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information made confidential by other statutes. Section 773.091 of the Health and Safety Code provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical service (“EMS”) records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. Upon review, we find the submitted Patient Care Report is an EMS record subject to section 773.091. Records that are confidential under section 773.091 may be disclosed to “individuals, corporations, or governmental agencies involved in the payment or collection of fees for emergency medical services rendered by emergency medical services personnel.” *Id.* § 773.092(e)(7). The requestor claims that, as the attorney for “the workers’ compensation carrier responsible for payment of all EMS provided in connection with this matter[,]” he is authorized to receive the Patient Care Report at issue pursuant to section 773.092(e)(7). Thus, if the requestor represents an entity that was involved in the payment or collection of fees for the services reflected in the submitted Patient Care Report, the submitted EMS records must be released pursuant to

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<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

section 773.092(e)(7).<sup>3</sup> However, if the requestor's client was not involved in paying for or collecting money to pay for the EMS rendered in the report at issue, then except for the information that must be released under section 773.091(g), the Patient Care Report must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b).

We next turn to the information not subject to section 552.022, which you claim is subject to section 552.103 of the Government Code. Section 552.103 provides in relevant part 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 purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). A governmental body 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 was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *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.*); ORD 551 at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

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<sup>3</sup>In such case, because the requestor has a right of access to the EMS records being released, the city must again seek a decision from this office if it receives another request for the same information from a different requestor.

To establish that litigation is reasonably anticipated for purposes of section 552.103, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *See* Open Records Decision No. 452 at 5 (1986). This office has concluded that a governmental body's receipt of a claim letter that it represents to be in compliance with the notice requirements of the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code, is sufficient to establish that litigation is reasonably anticipated. *See* Open Records Decision No. 638 at 4 (1996). If that representation is not made, the receipt of the claim letter is a factor we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established litigation is reasonably anticipated. *See id.*

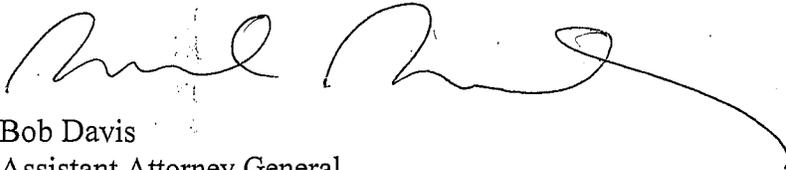
You affirmatively represent the written request for information in this instance meets the notice requirements of the Texas Tort Claims Act. Based on this representation, we agree litigation was reasonably anticipated on the date the city received the request. Additionally, upon review of the notice and submitted information, we find the remaining submitted information relates to the anticipated litigation. However, once information is obtained from or provided to all the opposing parties in the litigation, there is no interest in withholding that information under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We have marked a letter in the remaining information that reflects it was sent to the city by the requestor's client, which is the city's lone opposing party in the anticipated lawsuit. Consequently, this document may not be withheld under section 552.103 of the Government Code. The remaining information at issue may be withheld under section 552.103. However, we note the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the submitted Patient Care Report must be released to this requestor pursuant to section 773.092(e)(7) of the Health and Safety Code if he represents an entity that was involved in the payment or collection of fees for the services reflected in the submitted Patient Care Report. Otherwise, the information in the submitted Patient Care Report subject to section 773.092(g) must be released, and the remaining portions of the report must be withheld under section 552.101 of the Government Code in conjunction with section 773.092(a). The city must release the CIP Weekly Report and performance bond and insurance documents we marked under section 552.022 of the Government Code, but must withhold the insurance policy numbers we marked under section 552.136 of the Government Code. With the exception of the marked letter that was sent to the city by its lone opposing party in the anticipated litigation, which must be released, the city may withhold the remaining information under section 552.103 of the Government Code.

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](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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long, sweeping underline that extends to the right.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/eeg

Ref: ID# 380930

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)