



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 28, 2010

Ms. Laura Garza Jimenez  
Nueces County Attorney  
901 Leopard Street, Room 207  
Corpus Christi, Texas 78401-3680

OR2010-09530

Dear Ms. Jimenez:

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# 384558.

The Nueces County Commissioner's Court (the "county") received a request for all correspondence related to the Santa Maria Acres Subdivision and the roadway known as Santa Maria Lane during a specified time period. You claim that the requested 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 the county has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code § 552.301(a), (e)(1)(D). The county has redacted e-mail addresses of members of the public. Redaction of this type of information is now permitted pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684, which authorizes the withholding of ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code. *See* Open Records No. 684 (2009) at 8. However, you do not assert, nor does our review of our records indicate, that the county has been authorized to withhold the remaining information the county redacted without seeking a ruling from this office. *See* Gov't Code § 552.301(a). In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does

not inhibit our ability to make a ruling. However, in the future, the county must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code. *See id.* §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

We now turn to your argument under section 552.103 of the Government Code, which provides in part:

(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.

*Id.* § 552.103(a), (c). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). You inform us that the submitted information pertains to a civil case that was pending before the request was received. We note that the county is not a party to the pending case and, therefore, does not have a litigation interest in the matter for purposes of section 552.103. In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. However, you have not provided this office with an affirmative representation from any governmental body with a litigation interest that the governmental body wishes the information at issue to be withheld pursuant to section 552.103. Accordingly, the county may not withhold the information at issue under section 552.103 of the Government Code.

Section 552.136 of the Government Code provides 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. The county must withhold the customer account numbers we have marked under section 552.136 of the Government Code.

We note some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the county must withhold the customer account numbers we have marked under section 552.136 of the Government Code. The remaining information must be released, but any information that is protected by copyright may only be released in accordance with copyright law.

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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 384558

Enc. Submitted documents

c: Requestor  
(w/o enclosures)