



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 2, 2011

Ms. Ashley S. Wilson  
General Counsel  
Dallas County Schools  
612 North Zang Boulevard  
Dallas, Texas 75208

OR2011-01721

Dear Ms. Wilson:

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# 407893.

Dallas County Schools ("DCS") received a request for all documents related to DCS's purchase of a specified property, including any title policies and title opinions, and any correspondence, offers for sale, or other representations made by a named entity. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.136 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note that portions of the submitted information, which we have marked, are subject to section 552.022 of the Government Code. This section provides, in relevant part:

[T]he 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). In this instance, the submitted information contains signed contracts, an insurance policy, invoices, and checks that relate to the expenditure of public funds, and as such are made expressly public by section 552.022(a)(3). Information subject to section 552.022(a)(3) may be withheld only to the extent it is confidential under "other law[.]" Although you raise section 552.103, this is a discretionary exception to disclosure that protects only 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 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022(a)(3), and DCS may not withhold any of the information that is subject to section 552.022 on this basis. However, you also raise section 552.136, which does constitute other law for purposes of section 552.022. Accordingly, we will address the applicability of section 552.136 to this information.

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(b). An access device number is one that may be used to "(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument," and includes an account number. *Id.* § 552.136(a). The submitted information contains bank account numbers, bank routing numbers, and insurance policy numbers, which we have marked, that DCS must withhold under section 552.136.<sup>1</sup> As you have raised no further exceptions for the remaining information that is subject to section 552.022, it must be released.

We now address your argument against disclosure of the remaining information not subject to section 552.022. Section 552.103 of the Government Code provides, in relevant 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

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<sup>1</sup>We note that Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account numbers, bank routing numbers, and insurance policy numbers under section 552.136, without the necessity of requesting an attorney general decision.

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 applies in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information is related to that litigation. *See 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.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* This office has concluded that a governmental body's receipt of a claim that it represents to be in compliance with the notice requirements of the Texas Tort Claims Act (the "TTCA"), chapter 101 of the Civil Practice and Remedies Code, is sufficient to establish that litigation is reasonably anticipated. If this representation is not made, then the receipt of the claim letter is a factor that we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established that litigation is reasonably anticipated. *See* Open Records Decision No. 638 at 4 (1996).

You assert that DCS reasonably anticipated litigation at the time of the request because a subcontractor who obtained a lien against the prior owner of your property is asserting that lien against DCS. Prior to the date DCS received the instant request, the requestor, an attorney representing the subcontractor, sent a notice to DCS informing it of the lien and demanding return of her client's property, thereby putting DCS on notice of a claim. You do not affirmatively represent to this office that the requestor made a claim against DCS that is in compliance with the TTCA. However, after reviewing the submitted documentation and your arguments, we conclude, based on the totality of the circumstances, that DCS reasonably anticipated litigation when it received the request for information, and that the information at issue is related to the anticipated litigation for purposes of section 552.103(a). We therefore conclude that DCS may withhold the remaining information under section 552.103.

We note, however, that once the information at issue has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists as to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all other parties in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. The applicability of section 552.103(a) also ends once the litigation has been concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, DCS must release the information we have marked under section 552.022(a)(3). In doing so, DCS must withhold the information we have marked under section 552.136. The remaining information may be withheld under section 552.103.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID # 407893

Enc. Submitted documents

c: Requestor  
(w/o enclosures)