



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2011

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

OR2011-03265

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# 410888.

The City of Corpus Christi (the "city") received a request for information regarding a lawsuit filed by the city against the requestor, including the certified accounting used to determine the requestor's liability, documents related to the city's attempts to notify the requestor of the lawsuit, and documents authorizing the city to file the lawsuit against the requestor. You state the city has provided some of the information to the requestor, with redactions pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted 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 the submitted information contains receipts and invoices related to the expenditure of public funds. Pursuant to section 552.022(a)(3), "information in an account, voucher or contract" that relates to the expenditure of public funds is deemed public, unless "expressly confidential under other law." Gov't Code § 552.022(a)(3). Although you raise section 552.103, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *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); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes

¹We note this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

this information expressly confidential for purposes of section 552.022(a)(3). Therefore, the city may not withhold these receipts and invoices under section 552.103 of the Government Code.

The receipts contain partial credit card numbers and an insurance policy number. Section 552.136(b) of the Government Code provides, “[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”). Thus, the city must withhold the information we have marked pursuant to section 552.136 of the Government Code.²

As to the remaining information not subject to section 552.022 of the Government Code, we will address the city’s assertion of section 552.103. Section 552.103 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 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 governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *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 prongs of this test for information to be excepted under section 552.103(a).

²As previously noted, Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold credit card and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

You state, and provide documentation showing, the city has filed a lawsuit against the requestor in the 148th Judicial District Court of Nueces County, Texas, to recover legal costs related to a temporary injunction filed against the city, and the litigation was pending on the date the city received the request for information. You state the submitted information relates to the pending litigation because it documents the costs incurred by the city as a result of the temporary injunction. Based on these representations and our review, we find the city was engaged in pending litigation on the date it received the request for information, and the information at issue relates to the pending litigation. Accordingly, the city may withhold the remaining information, which we have marked, under section 552.103(a) of the Government Code.

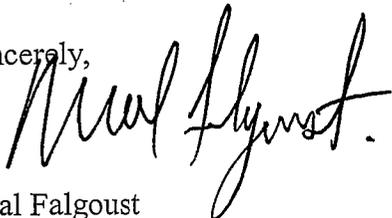
We note, however, once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information obtained from or provided to all other parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, 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 city must withhold the partial credit card numbers and insurance policy number we have marked under section 552.136 of the Government Code. The city may withhold the information we have marked under section 552.103(a) of the Government Code. The remaining 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, toll free at (888) 672-6787.

Sincerely,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 410888

Enc. Submitted documents

c: Requestor
(w/o enclosures)