



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 6, 2011

Ms. Allison Bastian  
Assistant City Attorney  
City of Brownsville  
1001 East Elizabeth  
Brownsville, Texas 78522

OR2011-04728

Dear Ms. Bastian:

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# 413803.

The City of Brownsville (the "city") received a request for the following information: (1) a copy of the applicable insurance policy and declaration sheet; (2) the PIP/Med Pay File or medical benefits coverage that may be afforded to the requestor's client; (3) a specified property damage file; (4) correspondence between the city and any third-party tortfeasor's insurance company; and (5) all witness statements taken in relation to a specified accident. You state you have no information responsive to items 2-5 of the request.<sup>1</sup> 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.

Initially, we note it appears most of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-13884 (2010). In that decision, we concluded the city may not withhold the information at issue under section 552.103 of the Government Code because the city failed to comply with section 552.301 of the Government Code in requesting the decision. *See*

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Gov't Code §§ 552.301(b), .302. We further held the city may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code because that section does not make insurance information confidential for purposes of section 552.101. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. *See id.* §§ 552.007, .301(f) (governmental body is prohibited from asking for decision from if governmental body previously requested and received a determination concerning the precise information at issue and attorney general determined information is not excepted from disclosure). Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the city must rely on Open Records Letter No. 2010-13884 as a previous determination and release the information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information was not previously ruled upon, we will consider the city's arguments against disclosure of the submitted information.

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant 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:

...  
(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). The submitted information consists of information in a contract relating to the expenditure of public funds that is subject to section 552.022(a)(3). Information subject to section 552.022(a)(3) may be withheld only if it is expressly made confidential under other law. *See id.* You argue the information at issue is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not "other law" that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (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). Consequently, the city may not withhold the information at issue under section 552.103 of the Government Code. However, because section 552.101 of the Government Code is other

law for purposes of section 552.022(a)(3), we will consider your argument under section 552.101 for the information at issue. Because section 552.130 of the Government Code is also other law for purposes of section 552.022(a)(3), we will also consider this exception for the information at issue.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information other statutes make confidential, such as section 101.104 of the Texas Civil Practice and Remedies Code, which provides as follows:

(a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under [the Texas Tort Claims Act].

(b) Neither the existence nor the amount of the insurance is subject to discovery.

Tex. Civ. Prac. & Rem. Code § 101.104. Section 101.104 prohibits the discovery and admission of insurance information during a trial under the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code. *See City of Bedford v. Schattman*, 776 S.W.2d 812, 813-14 (Tex. App.—Fort Worth 1989, orig. proceeding) (protection from producing evidence of insurance coverage under section 101.104 is limited to actions brought under the Tort Claims Act). However, section 101.104 does not make insurance information confidential for purposes of section 552.101 of the Government Code. *See Open Records Decision No. 551 at 3 (1990)* (provisions of section 101.104 "are not relevant to the availability of the information to the public"). The Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See Gov't Code §§ 552.005 (Act does not affect scope of civil discovery), .006 (Act does not authorize withholding public information or limit availability of public information to public except as expressly provided by the Act); see also Attorney General Opinion JM-1048 (1989); Open Records Decision No. 575 (1990) (overruled in part by Open Records Decision No. 647 (1996)) (section 552.101 does not encompass discovery privileges)*. Thus, we find section 101.104 of the Civil Practice and Remedies Code does not make the submitted information confidential for purposes of section 552.101 of the Government Code. Therefore, the city may not withhold the information at issue under section 552.101 in conjunction with section 101.104.

We note section 552.130 of the Government Code may be applicable to portions of the submitted information. Section 552.130 provides information relating to a motor vehicle title or registration issued by a Texas agency is excepted from public release. Gov't Code

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

§ 552.130(a)(2). In this instance, we are unable to determine whether the information we have marked constitutes Texas motor vehicle information. Accordingly, to the extent the information we have marked constitutes Texas motor vehicle record information, the city must withhold it under section 552.130 of the Government Code.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the city must rely on Open Records Letter No. 2010-13884 as a previous determination and release the information in accordance with that ruling. To the extent the information we have marked constitutes Texas motor vehicle record information, the city must withhold it under section 552.130 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/tf

Ref: ID# 413803

Enc. Submitted documents

c: Requestor  
(w/o enclosures)