



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 6, 2011

Mr. Don Cheatham  
General Counsel  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2011-07914

Dear Ms. Eales:

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# 419759 (GC Nos. 18414 and 18422).

The City of Houston (the "city") received two requests from the same requestor for (1) permit application files for street functions to occur on January 14, 2012, (2) applications for street functions filed on January 18, 2011, (3) a specified conditional parade permit for January 16, 2012, and (4) a specified parade permit for January 11, 2011. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

We first note you have not submitted the specified conditional permit for January 16, 2012 or any permit applications filed on January 18, 2011. To the extent this information existed on the date the city received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

We next note the submitted information contains a check, which is subject to section 552.022(a)(3) of the Government Code, which provides that "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body" is subject to required public disclosure unless it is made expressly

confidential under "other law." *Id.* § 552.022(a)(3). Although you raise section 552.103 for this information, that is a discretionary exception to disclosure that protects only a governmental body's interests and may be waived. *See 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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, you may not withhold the information at issue, which we have marked, under section 552.103. However, we note a portion of this information is subject to section 552.136 of the Government Code, which does constitute other law for purposes of section 552.022.<sup>1</sup> Therefore, we will consider the applicability of that exception.

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 information subject to release under section 552.022 contains a bank routing number and a bank account number, which we have marked. The city must withhold this information under section 552.136.<sup>2</sup> As you raise no additional exceptions for the remaining information subject to section 552.022, it must be released to the requestor.

You assert the remaining information is excepted under section 552.103 of the Government Code, which 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.

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<sup>1</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup> We note 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 and bank routing numbers under section 552.136, without the necessity of requesting an attorney general decision.

(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 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.

You inform us, and provide documentation showing, that prior to the city's receipt of the present request for information, the city was named as a defendant in a lawsuit styled *Charles J. Stamps, Individually and d/b/a MLK Parade Foundation v. City of Houston, Black Heritage Society, Inc., Tom Jones, Individually and d/b/a Ambassadors King Celebration, Samuel Thomas, Individually, Sandra Hines, Individually, Willard Vital, Individually, and Ovide Duncantell, Individually*, Cause No. 2011-15765, filed in the 270th District Court of Harris County, Texas. You state the pending litigation involves claims regarding the issuance of parade permits, and the submitted parade permit information relates to the substance of the claims in the litigation. Upon review, we conclude litigation was pending when the city received the request. We also find the remaining submitted information is related to the pending litigation for purposes of section 552.103. Thus, the city may withhold the remaining submitted information under section 552.103.

We note once the information at issue has been obtained by all parties to the litigation through discovery or otherwise, a section 552.103(a) interest no longer 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 must be disclosed. The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the city must release the information we have marked under section 552.022(a)(3). In releasing that information, the city must withhold the information

we have marked under section 552.136. The city may withhold the remaining information 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/bs

Ref: ID # 419759

Enc. Submitted documents

c: Requestor  
(w/o enclosures)