



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2011

Ms. Anne M. Constantine  
Legal Counsel  
Dallas/Fort Worth International Airport  
P.O. Box 619428  
DFW Airport, Texas 75261-9428

OR2011-08213

Dear Ms. Constantine:

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# 420432.

The Dallas/Fort Worth International Airport (the "airport") received a request for four categories of information regarding airport concessions or concessionaires, including information relating to lease negotiations, concessions and pricing policies, and specified communications. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you inform us the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-02161 (2011). In that ruling, we concluded the airport must release certain information subject to section 552.022 of the Government Code, must withhold certain information under section 552.136 of the Government Code, and may withhold certain information under section 552.103 of the Government Code. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information at issue in the current request is identical to the information previously

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

requested and ruled upon by this office, we conclude the airport must continue to rely on Open Records Letter No. 2011-02161 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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 is not encompassed by the previous ruling, we will consider your arguments against disclosure.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code, which 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; [and]

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures[.]

Gov't Code § 552.022(a)(3), (8). In this instance, the submitted information includes lease and permit contracts, payment vouchers, and invoices relating to the receipt or expenditure of public funds by the airport subject to section 552.022(a)(3). Further, the submitted information contains an airport policy subject to section 552.022(a)(8). Although the airport seeks to withhold information subject to section 552.022 under section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects the 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022(a)(3) and (a)(8). Accordingly, the airport may not withhold the types of information we have marked that are subject to section 552.022 under section 552.103 of the Government Code. We note, however, a portion of this information is subject to section 552.136 of the Government Code, which is

“other law” for the purposes of section 552.022.<sup>2</sup> Thus, we will consider the applicability of section 552.136 to the information at issue. In addition, we will consider your arguments for the information not subject to section 552.022.

Section 552.136 of the Government Code states “[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. Accordingly, the airport must withhold the bank account and routing number in the documents subject to section 552.022(a)(3) we have marked under section 552.136 of the Government Code.<sup>3</sup>

You claim the remaining information not subject to section 552.022 is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 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). A 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 (1) litigation was 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*

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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. *Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

<sup>3</sup>We note this office issued *Open Records Decision No. 684 (2009)*, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a bank checking account and routing number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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). *See* ORD 551 at 4.

You state, and provide documentation showing, prior to the airport's receipt of this public information request, a lawsuit styled *Multi Restaurants Concepts, Ltd., Champps DFW Joint Venture. ASC Star I, Ltd., and Team Joint Venture v. DFW International Airport Board*, Cause No. 10-14465, was filed in the 14th Judicial District Court of Dallas County. We therefore agree litigation involving the airport was pending on the date the airport received the request. You also state the requested information is related to the pending litigation because it directly relates to the allegations set forth in the lawsuit regarding the "rent" owed the airport under the concession contracts. Based on your representations and our review, we agree the remaining information at issue relates to pending litigation for purposes of section 552.103. Accordingly, the airport may generally withhold the remaining information under section 552.103 of the Government Code.<sup>4</sup>

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

In summary, to the extent the information at issue is identical to the information previously requested and ruled upon by this office, the airport must continue to rely on Open Records Letter No. 2011-02161 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the submitted information is not encompassed by the previous ruling, the airport must release the information we have marked under section 552.022(a)(3) and (a)(8) of the Government Code. However, the airport must withhold the information we have marked under section 552.136 of the Government Code. To the extent the airport's opposing parties in the litigation have not seen or had access to the remaining information, the airport may withhold this information under section 552.103 of the Government Code. To the extent the airport's opposing parties have seen or had access to the remaining information, it 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).

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, written over a vertical line of perforations.

Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 420432

Enc. Submitted documents

c: Requestor  
(w/o enclosures)