



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 27, 2011

Mr. Charles T. Jeremiah  
For Lamb County  
Chamberlain, Hrdlicka, White, Williams & Martin, P.C.  
1200 Smith Street, Suite 1400  
Houston, Texas 77002

OR2011-10781

Dear Mr. Jeremiah:

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# 425103.

Lamb County (the "county"), which you represent, received a request for the following: 1) the county's adopted budget broken down by department and individual office holder, including all individual budget requests made by county departments and individual office holders for 2009, 2010, and 2011; 2) all county liability protection plans, self-insurance plans, risk management pools, or insurance policies under which the county gave notice of claims made in a specified case; and 3) all documents describing the county's liability protection program from 1996 through 2009.<sup>1</sup> You claim that the requested 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 representative sample

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<sup>1</sup>You note that the county sought clarification for a portion of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

of information.<sup>2</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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; [and]

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

*Id.* § 552.022(a)(3), (5). We marked the submitted insurance policy documents that consist of information in a contract related to the receipt or expenditure of funds by the district under section 552.022(a)(3). We have also marked the submitted estimate under section 552.022(a)(5). Thus, pursuant to section 552.022(a)(3) and section 552.022(a)(5), the county may only withhold this marked information if it is confidential under "other law." You claim these documents are excepted from disclosure under section 552.103 of the Government Code. This section, however, is a discretionary exception to disclosure that protects a governmental body's interest 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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential). Consequently, the county may not withhold the

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<sup>2</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

information subject to section 552.022 under section 552.103. The Texas Supreme Court has determined the discovery privileges found in the Texas Rules of Civil Procedure and the Texas Rules of Evidence “are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, section 101.104 of the Civil Practice and Remedies Code is a civil discovery privilege under the Civil Practice and Remedies Code; it is not a discovery privilege found in either the Texas Rules of Civil Procedure or the Texas Rules of Evidence and therefore is not “other law” for purposes of section 552.022. You also raise section 101.104 in conjunction with section 552.101 of the Government Code, which 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 is “other law” for purposes of section 552.022. Section 101.104, however, is a civil discovery privilege and does not make insurance information expressly confidential for purposes of section 552.101. *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”); *see also* Attorney General Opinion JM-1048 (1989); Open Records Decision No. 647 at 2 (1996) (information that may be privileged in the civil discovery context may not be withheld from disclosure pursuant to section 552.101 of the Government Code). Accordingly, we determine information subject to section 552.022 may not be withheld from disclosure on the basis of section 101.104 of the Civil Practice and Remedies Code. As you raise no further exceptions to disclosure of this information, the submitted information must be released in its entirety.

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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 425103

Enc. Submitted documents

c: Requestor  
(w/o enclosures)