



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2011

Ms. Allison Bastian
Assistant City Attorney
City of Brownsville
P.O. Box 911
Brownsville, Texas 78520-0911

OR2011-14178

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# 431682.

The City of Brownsville (the "city") received a request for the following information related to a specified incident involving the requestor's clients: (1) the applicable insurance policy and declaration sheet; (2) the applicable PIP/Med Pay file or medical benefits coverage; (3) the property damage file, including any repair invoices, estimates, photographs, and documents; (4) certain correspondence, notes or other documentation; and (5) all related witness statements. You state the city does not have information responsive to categories 2, 4, and 5 of the request.¹ You further state the city will release the information responsive to category 3 of the request. You claim the remaining requested information is excepted from disclosure pursuant to 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 the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2011-04728 (2011) and 2010-13884 (2010). In Open Records Letter No. 2011-04728, we concluded the city may not withhold the information at issue under section 552.103 of the Government Code because the information at issue is subject to section 552.022(a)(3) of the Government Code. In Open Records Letter No. 2010-13884, 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* Gov't Code §§ 552.301(b), .302. In Open Records Letter Nos. 2011-04728 and 2010-13884,

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

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 rulings were 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 Nos. 2011-04728 and 2010-13884 as previous determinations and release the information in accordance with those rulings. *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.

Next, we note the submitted information is subject to section 552.022(a)(3) 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[.]

Gov't Code § 552.022(a)(3). The submitted insurance policy documents consist of information in a contract related to the receipt or expenditure of funds by the city under section 552.022(a)(3). Thus, pursuant to section 552.022(a)(3), the city may only withhold this 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 city may not withhold the submitted information 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 the submitted information 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, 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 431682

Enc. Submitted documents

c: Requestor
(w/o enclosures)