



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2011

Ms. Candice M. Gambrell
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 368
Houston, Texas 77001

OR2011-14520

Dear Ms. Gambrell:

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# 432251.

The City of Houston (the "city") received a request for certain applications and files for street function permits and parade permits pertaining to specified organizations. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) [T]he 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;

....
(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (17). The submitted information contains checks, vouchers, and contracts related to the receipt or expenditure of city funds that fall within the purview of section 552.022(a)(3). The submitted information also contains a court order signed by a judge that is subject to section 552.022(a)(17). This information must be released unless it is expressly confidential under "other law." *See id.* § 552.022(a). Although you raise section 552.103 of the Government Code, this section is discretionary in nature and thus may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 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). As such, section 552.103 does not constitute "other law" that makes information expressly confidential for the purposes of section 552.022. Therefore, the city may not withhold the information that is subject to section 552.022 under section 552.103.

We next address the information that is not subject to section 552.022. Section 552.103 of the Government Code 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.

....
(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.

Gov't Code § 552.103(a), (c). The governmental body claiming this exception bears the burden of providing relevant facts and documents to demonstrate the applicability of the exception. The test for meeting this burden is a showing that (1) litigation is 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 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).

You inform us the requestor filed suit against the city alleging claims of civil conspiracy and fraud in issuing parade permits. You also state dispositive motions and orders are signed, and all claims against the city were resolved prior to the city's receipt of the request. Nevertheless, you argue the litigation is still pending because the trial court maintains plenary power to alter the judgment, and the parties are within their rights to file post-judgment motions seeking to set aside the non-suit and reinstate the case. However, the mere chance the requestor may file a post-trial motion is insufficient to demonstrate the litigation is still pending. Accordingly, the city has failed to demonstrate the applicability of section 552.103(a) of the Government Code.

Some of the information, however, is subject to section 552.136 of the Government Code, which 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 records contain insurance policy numbers and bank routing and account numbers. The city must withhold these numbers under section 552.136.

The records also contain e-mail addresses. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Therefore, unless the e-mail addresses are excluded by subsection (c) or their owners have affirmatively consented to their public disclosure, the personal e-mail addresses must be withheld under section 552.137 of the Government Code.¹

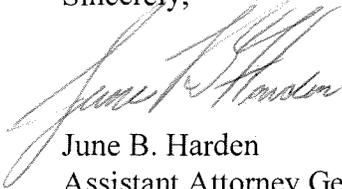
In summary, the city must withhold the insurance policy numbers and bank account and routing numbers we marked under section 552.136. Unless the e-mail addresses are excluded by subsection (c) or their owners have affirmatively consented to their public disclosure, the personal e-mail addresses must be withheld under section 552.137. 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.

¹Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.137 of the Government Code.

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/bs

Ref: ID# 432251

Enc. Submitted documents

c: Requestor
(w/o enclosures)