



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2011

Mr. J. Frank Davis
Assistant District Attorney
Hays County
111 East San Antonio Street, Suite 204
San Marcos, Texas 78666

OR2011-15040

Dear Mr. Davis:

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# 434023.

Hays County (the "county") received a request for any payments made to the county since a specified date in relation to four specified cause numbers. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. You also state release of the information at issue may implicate the interests of a third-party. You provide documentation showing you have notified the third-party of the request and his right to submit arguments to this office.¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exception and reviewed the submitted information.

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(3) provides for required disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]" unless the information is expressly confidential under "other law." *Id.* § 552.022(a)(3). Thus, the county must release the submitted information unless the information is expressly confidential under "other law."

¹As of the date of this ruling, we have not received comments from the interested third-party.

You raise section 552.107(2), which allows a governmental body to withhold information if “a court by order has prohibited disclosure of the information.” *Id.* § 552.107(2). In this instance, the county relies on the “Confidential Release, Settlement, Covenant and Indemnity Agreement” (the “agreement”) entered by the court in *State of Texas v. Prakash and Sarawati AKA Swami Ji and Peter Spiegel*, Cause Nos. 11-0484, CR-08-0272, 11-0485, and CR-08-0273, 22nd District Court, Hays County, Texas. You explain the submitted information is related to the litigation in which the agreement was entered. The county has submitted a copy of the agreement. Having considered your arguments and reviewed the agreement, we note section 552.022(b) of the Government Code provides as follows:

(b) A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is expressly made confidential under other law.

Id. § 552.022(b). Under section 552.022(b), a court may not order a governmental body to withhold from the public information encompassed by section 552.022(a) unless the information is expressly made confidential under other law. That is, the Act does not allow a court to withhold from disclosure information the Legislature has deemed to be expressly public. The agreement does not find the submitted information to be confidential under other law. In addition, we note the agreement expressly provides that compliance with the Act is not considered a breach of the agreement. *See* Confidential Release, Settlement, Covenant and Indemnity Agreement, ¶ 5.h. Therefore, because a court cannot order the county to withhold information encompassed by section 552.022(a) unless the information is expressly made confidential under other law, we conclude the county may not withhold any of the submitted information on the basis of the agreement under section 552.107(2) of the Government Code.

However, we note a portion of the submitted information is subject to section 552.136 of the Government Code.² Section 552.136 is “other law” for purposes of section 552.022. Thus, we will address the applicability of this section. Section 552.136 provides “[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.” *Id.* § 552.136(a). Bank account and bank routing numbers constitute access device numbers for purposes of section 552.136. Thus, the county must withhold the information we have

²The 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).

marked under section 552.136 of the Government Code. The remaining information must be released to the requestor.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 424023

Enc. Submitted documents

c: Requestor
(w/o enclosures)