



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2012

Ms. Tiffany Evans  
Assistant City Attorney  
City of Houston Legal Department  
P.O. Box 368  
Houston, Texas 77001-0368

OR2012-00294

Dear Ms. Evans:

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# 441584 (Houston GC No. 19052).

The City of Houston (the "city") received a request for all documents related to the Rebuild Houston drainage fees assessed to a specified parcel of land; all documents related to any drainage fee exemptions, credits, discounts or reduction in the Rebuild Houston fee assessed to the specified property; and all communications between the city, two named individuals, and three named companies related to the Rebuild Houston drainage fees assessed to the specified property. You state the city will release a portion of the requested information to the requestor. 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.

Section 552.103 of the Government Code 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.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You state, and have provided a pleading demonstrating, a lawsuit styled *Allen Marc Dacus, Elizabeth C. Perez, and Rev. Robert Jefferson v. Annise D. Parker, Mayor and City of Houston*, Cause No. 2010-81591, was filed in the 234th District Court of Harris County and pending appeal at the time of the city's receipt of this request for information. Thus, we agree litigation was pending when the city received the instant request. The pending litigation alleges the proposition which authorized the assessment of drainage fees was improperly voted upon and thus is illegal and invalid. Based on our review of the pleadings you provided and the submitted information concerning drainage fees assessed to a specific property, we find you have failed to demonstrate the submitted information is related to this pending litigation regarding the validity of the proposition. Accordingly, the city may not withhold the submitted information under section 552.103 of the Government Code.

We note the information being released contains an utility account number. Section 552.136 of the Government Code provides “[n]otwithstanding any other provision of [the Act], 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.”<sup>1</sup> 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. *See id* § 552.136(a). Upon review, we find the account number, which we have marked, constitutes an access device number

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<sup>1</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. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

for purposes of section 552.136. Thus, the city must withhold this information under section 552.136.

In summary, the city must withhold the utility account number we have marked under section 552.136 of the Government Code. 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.

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,

A handwritten signature in black ink that reads "Jessica Marsh". The signature is written in a cursive, flowing style.

Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 441584

Enc. Submitted documents

c: Requestor  
(w/o enclosures)