



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2012

Ms. Mareia Schreiber
Legal Assistant
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR2012-01300

Dear Ms. Schreiber:

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# 443380 (ORR# 11-484).

The City of Galveston (the "city") received a request for the civil service file of a named officer, with personal identifiers redacted. You claim that the requested 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.¹ We have also considered comments submitted by 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 that some of the responsive information falls within the scope of section 552.022 of the Government Code, which provides that certain categories of information are public information and not excepted from required disclosure unless they are made confidential under the Act or by other law. *Id.* § 552.022(a). Section 552.022(a)(3) of the Government Code provides for required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental

¹We 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.

body[.]” *Id.* § 552.022(a)(3). Section 552.022(a)(12) provides for required public disclosure of “final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases.” *Id.* § 552.022(a)(12). We have marked the information subject to section 552.022. Although you raise section 552.103 of the Government Code for this information, section 552.103 is a discretionary exception to disclosure that protects a governmental body’s interests 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 No. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 does not make information confidential for the purposes of section 552.022. Therefore, the city may not withhold the information subject to section 552.022 under section 552.103. However, sections 552.136 and 552.137 of the Government Code make information confidential for purposes of section 552.022.² Therefore, we will consider whether any of the information subject to section 552.022 must be withheld under sections 552.136 and 552.137. We will also consider your argument under section 552.103 for the remaining information.

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.” Gov’t Code § 552.136(b). Accordingly, the city must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.

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* Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address affirmatively consents to its public disclosure.

Section 552.103 of the Government Code provides as follows:

- (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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

...

(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.

Id. § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us the requestor's client has been indefinitely suspended from the city's police department. You state the city is a civil service city under chapter 143 of the Local Government Code. You also state the requestor's client has filed an appeal to his suspension pursuant to chapter 143 of the Local Government Code. We note municipal civil service appeals, such as the one at issue here, are governed by chapter 143 of the Local Government Code. *See* Local Gov't Code §§ 143.057, .127-.131. This office has determined such appeal proceedings constitute litigation for purposes of section 552.103. *Cf.* Open Records Decision No. 588 (1991). You state "the appeal of the indefinite suspension had been continued from the first hearing date of October 28, 2011 at the time the [present request] was filed and remains open[.]" Based on your representations and our review of the documents at issue, we find the city was a party to pending litigation on the date it received the request for information. Further, you state the remaining information relates to the issue in the pending appeal. Upon review, we find the remaining information is related to the pending litigation. Accordingly, we conclude section 552.103 of the Government Code is applicable to the remaining information.

We note once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Accordingly, the city may only withhold the submitted information that the opposing party to the litigation has not seen or accessed under section 552.103 of the Government Code. We note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Therefore, the city may withhold the remaining information under section 552.103 of the Government Code.

To summarize: Except for the information we have marked that must be withheld under sections 552.136 and 552.137 of the Government Code, the city must release the information that is subject to section 552.022 of the Government Code. The city may withhold the remaining information under section 552.103 of the Government Code.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 443380

Enc. Submitted documents

c: Requestor
(w/o enclosures)