



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2012

Ms. Allison Bastian
Assistant City Attorney
City of Brownsville
P.O. Box 911
Brownsville, Texas 78522-0911

OR2012-10688

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# 459352.

The City of Brownsville (the "city") received a request for the following information related to a specified incident involving the requestor's client: 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. The city states it does not have any information responsive to categories two through five of the request.¹ The city claims the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless made confidential under this chapter or other law:

¹We note the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed), Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

- ...
- (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 expenditure of funds by the city and are subject to section 552.022(a)(3) of the Government Code. Accordingly, the city may only withhold the submitted information if it is confidential under the Act or other law. *Id.* The city raises sections 552.103 and 552.108 as exceptions to disclosure of the requested information. However, sections 552.103 and 552.108 are discretionary exceptions that do not make information confidential under the Act. *See 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the city may not withhold the submitted information on the basis of sections 552.103 and 552.108. The city also raises section 552.101 as an exception to disclosure, which protects information made confidential under other law. Accordingly, we will consider the city's argument under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 101.104 of the Texas Civil Practice and Remedies Code provides as follows:

- (a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under [the Texas Tort Claims Act ("TTCA")].

- (b) Neither the existence nor the amount of the insurance is subject to discovery.

Civ. Prac. & Rem. Code § 101.104. Section 101.104 prohibits the discovery and admission of insurance information during a trial under the TTCA. *See City of Bedford v. Schattman*, 776 S.W.2d 812, 813-14 (Tex. App.—Fort Worth 1989, orig. proceeding) (protection from producing evidence of insurance coverage under section 101.104 is limited to actions brought under the TTCA). However, section 101.104 does not make insurance information confidential for purposes of section 552.101 of the Government Code. *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"). The Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See* Gov't Code §§ 552.005 (Act does not affect scope of civil discovery), .006 (Act does not authorize withholding public information or limit availability of public information to public except as expressly

provided by the Act); *see also* Attorney General Opinion JM-1048 (1989). Thus, because section 101.104 does not make the information confidential, the city may not withhold this information under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code. The city must release the submitted information.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/bs

Ref: ID# 459352

Enc. Submitted documents

c: Requestor
(w/o enclosures)