



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2012

Mr. Thomas P. Karlok
Legal Assistant
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR2012-12272

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# 461024 (Galveston ORR # 12-298).

The City of Galveston (the "city") received a request for the civil service file of a named officer. You claim 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 representative sample of information.¹

Initially, we note you have redacted information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), (e)(1)(D). The city has redacted the named officer's home addresses, home phone numbers, social security number, and date of birth. Open Records Decision No. 670 (2001) authorizes all governmental bodies to withhold the home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of

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.

the Government Code without the necessity of requesting attorney general decision. However, you do not assert, nor does our review of our records indicate, the city has been authorized to withhold the redacted date of birth without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). As such, this type of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information, we will address its public availability. In the future, the city should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code or may be withheld pursuant to statutory authority. *See Gov't Code* §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302.

Next, we note some of the submitted 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 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 under the Act 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.

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

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). 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.

...

(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, and submit documentation showing, the appeal of the indefinite suspension was pending on the date the city received the request for information. 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 information not subject to section 552.022 relates to the issue in the pending appeal. Upon review, we find the information not subject to section 552.022 is related to the pending litigation. Accordingly, we conclude section 552.103 of the Government Code is applicable to the information not subject to section 552.022.

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 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, except for the information subject to section 552.022 of the Government Code, the city may withhold the submitted information under section 552.103 of the Government Code.

In summary, the information we have marked must be withheld under section 552.136 of the Government Code. Unless the owner of the marked e-mail address affirmatively consents to its disclosure, the city must withhold the marked e-mail address under section 552.137 of the Government Code. Except for the information subject to section 552.022 of the Government Code, the city may withhold the submitted information under section 552.103 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, 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,


Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 461024

Enc. Submitted documents

c: Requestor
(w/o enclosures)