



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2012

Mr. Adam Looney
Counsel for The Woodlands Township
The Strong Firm, P.C.
10003 Woodloch Forest Drive, Suite 210
The Woodlands, Texas 77380

OR2012-18121

Dear Mr. Looney:

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# 470974.

The Woodlands Township (the "township"), which you represent, received a request for (1) the "Management Rep Letter provided to Auditors for 2012 Audit," (2) a "[l]isting of all G/L accounts (with descriptions) which total to amounts on CAFR for FS line item 'Accounts Payable & Accrued Liabilities,'" and (3) "[f]or accounts which are not vendor payables . . . schedules of the components of accrued liabilities" as of two specified dates. 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor asserts the requested information has previously been released. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989). However, section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. We

note the requestor contends the city has already released the requested information “in one form or another” to members of the public. However, the requestor does not state the exact information at issue was released to any members of the public. Further, we have no indication the requested information has been released in its exact form to any members of the public. Accordingly, we find section 552.007 of the Government Code is inapplicable to the submitted information, and we will address the township’s argument against disclosure of this information.

Next, we note Exhibits B(2) and B(3) are subject to section 552.022 of the Government Code. This section provides, in relevant part, as follows:

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

...

(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). Exhibits B(2) and B(3) consist of information relating to the receipt or expenditure of public funds that is subject to subsection 552.022(a)(3) of the Government Code. Although you raise section 552.103 of the Government Code for the information at issue, this is a discretionary exception that may be waived and does not make information confidential under the Act. *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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 473 (1987) (section 552.103 may be waived). Thus, the township may not withhold Exhibits B(2) and B(3) under section 552.103 of the Government Code. As no further exceptions to disclosure are raised for this information, the township must release it. However, we will address your argument against disclosure of Exhibit B(1), which is not subject to section 552.022(a)(3).

Section 552.103 of the Government Code provides, in relevant 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). The 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 is 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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us, and provide documentation showing, the township received the request for information after a lawsuit styled *Jason Creel v. The Woodlands Township*, Cause No. 12-08-08704-CV, was filed in the 9th Judicial District Court of Montgomery County, Texas. Thus, we find litigation involving the township was pending when it received the request. You state the information at issue directly relates to the lawsuit. Based on your representations and our review, we agree Exhibit B(1) is related to the pending litigation for purposes of section 552.103. Accordingly, the township may withhold this information under section 552.103 of the Government Code.

However, we note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. See ORD 551 at 4-5. Therefore, once the information at issue has been obtained by all parties to the litigation through discovery or otherwise, a section 552.103(a) interest no longer exists as to that information. See Open Records Decision Nos. 349 (1982), 320 (1982). We also 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).

In summary, Exhibits B(2) and B(3) must be released pursuant to section 552.022(a)(3) of the Government Code. Exhibit B(1) may be withheld 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,

A handwritten signature in black ink, appearing to read 'KLC', with a long horizontal stroke extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 470974

Enc. Submitted documents

c: Requestor
(w/o enclosures)