



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2012

Mr. Gerald A. Calderon
Assistant Criminal District Attorney
Civil Section
Bexar County
300 Dolorosa, 5th Floor
San Antonio, Texas 78205-3030

OR2012-19582

Dear Mr. Calderon:

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# 473312.

Bexar County (the "county") received a request for a copy of the county's "all lines aggregate insurance policy." You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

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

¹Although you raise section 552.101 of the Government Code, you provide no arguments to support this claim. See Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested). Accordingly, we do not address your assertion of section 552.101 for the submitted information.

²We assume the "representative sample" of information 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 those records contain substantially different types of information than those submitted to this office.

(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:

...

(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 county and are subject to section 552.022(a)(3) of the Government Code. Accordingly, the county may only withhold the submitted information if it is confidential under the Act or other law. *Id.* The county raises section 552.103 as an exception to disclosure of the requested information. However, section 552.103 is a discretionary exception that does 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). Accordingly, the county may not withhold the submitted information on the basis of section 552.103. We note, however, that the submitted information contains insurance policy numbers subject to section 525.136 of the Government Code.³ Because section 552.136 makes information confidential under the Act, we will consider this exception's applicability to the submitted information.

Section 552.136(b) 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); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Accordingly, the county must withhold the information we have marked under section 552.136 of the Government Code.

We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the

³The 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).

governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the county must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The county must release the remaining information pursuant to section 552.022(a)(3) of the Government Code; however, any copyrighted information only may be released in accordance with copyright law.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 473312

Enc. Submitted documents

c: Requestor
(w/o enclosures)