



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2013

Mr. Ray Rodriguez
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2013-01581

Dear Mr. Rodriguez:

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# 477161 (COSA File No. W011220-102912).

The City of San Antonio (the "city") received a request for information pertaining to a named towing company during a specified period of time. You state the city has made or will make certain information available to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.103, 552.106, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You state a portion of the submitted information was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2012-17790 (2012). In this prior ruling, we ruled the city (1) may withhold, with the exception of the information we have marked, the information it has marked under section 552.103 of the Government

¹We assume 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 those records contain substantially different types of information than those submitted to this office.

Code; (2) may withhold the information we have marked under section 552.111 of the Government Code; (3) must withhold the marked cellular telephone number under section 552.117(a)(1) of the Government Code to the extent the individual whose information is at issue made a timely election under section 552.024 and the cellular telephone number is paid for with personal funds; (4) must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code; (5) must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release; and (6) must release the remaining responsive information. The requestor in the instant case is the owner of one of the e-mail addresses subject to section 552.137. Thus, the requestor has a right of access to his own e-mail address under section 552.137(b) of the Government Code and the city may not withhold it from him under section 552.137. *See id.* § 552.137(b). However, as to the remaining information, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the city must rely on Open Records Letter No. 2012-17790 as a previous determination and withhold or release the remaining information at issue in accordance with it. *See Open Records Decision No. 673 (2001)* (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). You also state you have submitted information that is not encompassed by the prior ruling. Accordingly, we will address your arguments against disclosure for the information that is not subject to Open Records Letter No. 2012-17790.

Section 552.103 of the Government Code provides in relevant part 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.

Gov't Code § 552.103(a), (c). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.*

§ 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) 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 exempted under section 552.103(a). ORD 551 at 4.

The city claims section 552.103 of the Government Code for the information it has marked. The requestor argues section 552.103 is inapplicable to the information at issue because the city is not a party to the litigation. Further, the requestor asserts the named towing company is not a party to the suit but rather certain employees of the towing company are the named defendants. The city states the information at issue relates to a prosecution by the city in the city's municipal court for violations of a local city ordinance regulating the non-consent towing of motorized vehicles by the named towing company. Based on these representations and our review, and regardless of whether the defendant in the case is the company or one of its employees, we find the information at issue is related to litigation to which the city is a party. The city also states, and we agree, the case was pending on the date the city received the request for information. Accordingly, the city may withhold the information it has marked under section 552.103 of the Government Code.²

We note, however, 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). Further, the applicability of section 552.103(a) ends once the litigation has concluded. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982).

We note the remaining information contains a cellular telephone number that may be subject to section 552.117 of the Government Code.³ Section 552.117(a)(1) exempts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024

²As section 552.103 is dispositive, we need not address your remaining arguments against disclosure for this information.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of the Government Code. *See* Gov't Code §§ 552.024, .117. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Therefore, to the extent the individual whose information is at issue made a timely election under section 552.024 and the cellular telephone number we have marked is not paid for with governmental funds, the city must withhold this information under section 552.117(a)(1) of the Government Code. However, to the extent the individual did not make a timely election under section 552.024 or the cellular telephone service was paid for with governmental funds, the city may not withhold the information at issue under section 552.117(a)(1) of the Government Code.

We also note some of the remaining information is subject to section 552.137 of the Government Code. Section 552.137 provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release.

In summary, we conclude the city must rely on Open Records Letter No. 2012-17790 as a previous determination and, except for the requestor's e-mail address, which must be released pursuant to section 552.137(b) of the Government Code, withhold or release the information at issue in accordance with the prior ruling. The city may withhold the information the city has marked under section 552.103 of the Government Code. The city must withhold cellular telephone number we have marked under section 552.117(a)(1) of the Government Code to the extent the individual whose information is at issue made a timely election under section 552.024 of the Government Code and the cellular telephone number we have marked is not paid for with governmental funds. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the

owners of the e-mail addresses have affirmatively consented to their release. The remaining information must be released.⁴

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 477161

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information being released contains the requestor's e-mail address. As previously mentioned, the requestor has a right of access to his e-mail address pursuant to section 552.137(b) of the Government Code. *See* Gov't Code § 552.137(b). Should the city receive another request for this information from a different requestor, we note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.