



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 31, 2013

Mr. Robert Henneke
Kerr County Attorney
700 Main Street Suite BA-103
Kerrville, Texas 78028

OR2013-09070

Dear Mr. Henneke:

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# 490560.

The Kerr County Sheriff's Office (the "sheriff's office") received a request for information related to a specified sale of property.¹ You claim that 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.

Initially, we note some of the submitted information is subject to section 552.022(a)(3) of the Government Code. Section 552.022(a)(3) provides "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body" is subject to required public disclosure unless it is made confidential under this chapter or "other law." Gov't Code § 552.022(a)(3). Although you raise section 552.103 for this information, this is a discretionary exceptions and 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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, none of the information subject to section 552.022 may be withheld under section 552.103. However, because section 552.136 can make information confidential under the Act, we will address

¹You note that the sheriff's office received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

its applicability to the information subject to section 552.022.² We will also consider your arguments under section 552.103 for the information not subject to section 552.022.

Section 552.136 of the Government Code states “[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”). Therefore, the sheriff’s office must withhold the information we have marked in the information subject to section 552.022 of the Government Code under section 552.136 of the Government Code.

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). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception applies 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 requested information is related to that litigation. *See 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 parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

You state, and provide documentation confirming, a lawsuit, styled *Johnson v. Spaulding*, Cause No. 13-355A was pending in the 216th District Court for Kerr County, Texas. You

²The 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).

further state, and provide documentation showing, that other individuals intervened in this suit and named the sheriff's office as a defendant party to the lawsuit at issue prior to the date the sheriff's office received the request for information. You state the submitted information relates to the sale of property that is the basis of the litigation. Based on your representations and our review, we find the sheriff's office was a party to litigation that was pending on the date of the request, and the information at issue is related to the pending litigation. Therefore, the sheriff's office may withhold the information not subject to section 552.022 under section 552.103 of the Government Code.

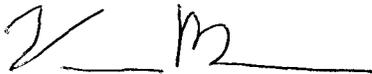
We note, however, once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the sheriff's office must withhold the information we have marked in the information subject to section 552.022 of the Government Code under section 552.136 of the Government Code. The sheriff's office may withhold the information not subject to section 552.022 of the Government Code 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,

A handwritten signature in black ink, appearing to read 'V Burgess', written over a horizontal line.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 490560

Enc. Submitted documents

c: Requestor
(w/o enclosures)