



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2013

Mr. Daniel Gonzalez
County Attorney
Dimmit County Attorney's Office
103 North 5th Street
Carrizo Springs, Texas 78834

OR2013-12743

Dear Mr. Gonzalez:

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# 494020.

The Dimmit County Auditor's Office (the "auditor's office") received a request for four categories of information from a specified time period pertaining to payments made by Dimmit County (the "county") to anyone regarding specified litigation with two named individuals. 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.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they were created after the date the request was received. The auditor's office need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we note the responsive information contains agendas and minutes of public meetings of the county's Commissioner's Court. The agendas and minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). Although you seek to withhold this information under section 552.103, the exceptions to disclosure found in the Act generally do not apply to information that other statutes make

public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the auditor's office must release the agendas and minutes, which we have marked, pursuant to chapter 551 of the Government Code.

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

(a) [T]he following categories of information are public information and not excepted from required disclosure 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; [and]

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(3), (16). Some of the responsive information consists of information in an account, voucher or contract relating to the expenditure of funds by a governmental body subject to subsection 552.022(a)(3). Portions of the responsive information also consist of attorney-fee bills subject to subsection 552.022(a)(16). The information subject to subsections 552.022(a)(3) and 552.022(a)(16) must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a). Although you raise section 552.103 of the Government Code for the information subject to section 552.022, this section is a discretionary exception to disclosure 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), 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 auditor's office may not withhold the information subject to section 552.022, which we have marked, under section 552.103 of the Government Code. However, we note portions of the information subject to section 552.022 are subject to section 552.136 of the Government Code.¹ Because section 552.136 makes information confidential under the Act, we will address its applicability to the information subject to section 552.022.

¹The 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).

Section 552.136 of the Government Code provides “[n]otwithstanding any other provision of this chapter, 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). An access device number is one that may be used to obtain money, goods, services, or another thing of value, or initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *See id.* § 552.136(a) (defining “access device”). This office has determined bank account and routing numbers are access device numbers for purposes of section 552.136 of the Government Code. Upon review, we find the auditor’s office must withhold the information we have marked under section 552.136 of the Government Code. As you raise no other exceptions to disclosure of the information subject to section 552.022 of the Government Code, the auditor’s office must release the remaining information subject to section 552.022.

Next, we address your claim under section 552.103 for the remaining responsive information. Section 552.103 of the Government Code provides in 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). 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 showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request, 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). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103.

You inform us the county was a party to litigation involving the named individuals at the time the auditor’s office received the instant request. You state the remaining responsive information is related to the pending lawsuit. Based on your representations and our review, we agree that litigation to which the county is a party was pending on the date the auditor’s office received the request. We further find that the remaining responsive information

relates to the pending litigation. Therefore, the auditor's office may withhold the remaining responsive information under section 552.103 of the Government Code.

We note that once the information has been obtained by all parties to the pending litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note that the applicability of section 552.103(a) ends when the litigation is concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

In summary, the auditor's office must release the agendas and minutes we have marked pursuant to chapter 551 of the Government Code. The auditor's office must withhold the information we have marked under section 552.136 of the Government Code and release the remaining information subject to section 552.022 of the Government Code. The auditor's office may withhold the remaining responsive information 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tch

Ref: ID# 494020

Enc. Submitted documents

c: Requestor
(w/o enclosures)