



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2014

Ms. Jennifer W. DeCurtis
Messer, Rockefeller & Fort, L.L.P.
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2014-01202

Dear Ms. DeCurtis:

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# 511885.

The City of Heath (the "city"), which you represent, received a request for six categories of information related to Lake Ray Hubbard and the Rush Creek Yacht Club since 1969, excluding "information protected by the attorney-client privilege or the work product doctrine."¹ You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we note the submitted information contains copies of city resolutions and ordinances. As laws and ordinances are binding on members of the public, they are matters

¹You inform us the city sought and 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); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision Nos. 551 at 2–3 (1990) (laws or ordinances are open records), 221 at 1 (1979) (official records of governmental body’s public proceedings are among most open of records). The submitted resolutions are analogous to an ordinance. Therefore, the city must release the submitted resolutions and ordinances, which we have marked.

We also note the submitted information contains the minutes of city council meetings. The minutes of a governmental body’s public meetings are specifically made public under provisions of the Open Meetings Act (the “OMA”), 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). Although you seek to withhold this information under section 552.103, as a general rule, the exceptions to disclosure found in the Act 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 city must release the submitted city council meeting minutes pursuant to the OMA.

Next, we note some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the 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]

...

(18) a settlement agreement to which a governmental body is a party.

Gov’t Code § 552.022(a)(3), (18). The information we have marked consists of information relating to the receipt or expenditure of public funds by the city, subject to section 552.022(a)(3) of the Government Code, and a settlement agreement to which the city is a party, subject to section 552.022(a)(18) of the Government Code. You seek to withhold this information under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception 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 Gov’t Code § 552.103); Open

may not withhold the information subject to section 552.022 under section 552.103. However, section 552.136 of the Government Code makes information confidential under the Act.³ Accordingly, we will consider the applicability of this section to the information subject to section 552.022 of the Government Code. We will also address your arguments under section 552.103 of the Government Code for the remaining information not subject to section 552.022 of the Government Code.

Section 552.136 of the Government Code states, "Notwithstanding 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); *see also id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.⁴ The city must release the remaining information subject to section 552.022 of the Government Code.

We next address your arguments under section 552.103 of the Government Code for the information not subject to section 552.022 of the Government Code. Section 552.103 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.

Id. § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴Section 552.136(c) authorizes a governmental body to redact information protected by section 552.136(b) without requesting a decision. *See id.* § 552.136(d)-(e) (providing requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general, and governmental body withholding information pursuant to section 552.136(c) must provide notice to requestor).

establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

To establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Open Records Decision No. 452 at 4 (1986)*. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Open Records Decision No. 452 at 4 (1986)*. In *Open Records Decision No. 638 (1996)*, this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a notice of claim letter and the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act (“TTCA”), chapter 101 of the Texas Civil Practices and Remedies Code, or an applicable municipal ordinance.

You inform us, and provide documentation which shows, the requestor filed a notice of claim with the city alleging damages prior to the city’s receipt of the request for information. You state the notice of claim complies with the TTCA. Accordingly, we find the city reasonably anticipated litigation when it received the request. You state, and the submitted information reflects, the information at issue relates to the anticipated litigation. Based on your representations and our review, we find you have demonstrated the information at issue is related to litigation reasonably anticipated at the time the city received the request for information. Therefore, we conclude the city may withhold the remaining information under section 552.103 of the Government Code.

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

In summary, the city must release (1) the submitted resolutions and ordinances, which we have marked; (2) the submitted city council meeting minutes, which we also have marked, pursuant to the OMA; and (3) the information subject to section 552.022 of the Government Code, except for the bank account and routing numbers we have marked which the city must withhold under section 552.136 of the Government Code. The city may withhold the remaining 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 511885

Enc. Submitted documents

c: Requestor
(w/o enclosures)