



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2016

Ms. Allison Bastian
Deputy City Attorney
City of Brownsville
1001 East Elizabeth Street, Suite 234
Brownsville, Texas 78520

OR2016-24528

Dear Ms. Bastian:

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# 633039.

The City of Brownsville (the "city") received a request for a copy of the city's General Liability Certificate of Insurance. You claim the submitted information is exempted from disclosure under sections 552.101 and 552.136¹ of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹We note the city did not raise section 552.136 of the Government Code as an exception to disclosure within ten business days of the date the city received the request. *See* Gov't Code §§ 552.301(b), .302. However, because section 552.136 makes information confidential, it can provide a compelling reason to withhold information from disclosure, and we will consider your claim under this exception, notwithstanding the city's violation of section 552.301(b) in raising this exception. *See id.* § 552.302.

²We understand you to raise section 552.101 based on the substance of your arguments. Also, although you raise Texas Rule of Evidence 503, you make no arguments explaining how this rule is applicable to the submitted information. Therefore, we assume you have withdrawn your claim that this rule applies to the submitted information. *See id.* §§ 552.301, .302.

Code § 552.101. This exception encompasses information other statutes make confidential. Section 101.104 of the Civil Practice and Remedies Code provides:

(a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under [the Texas Tort Claims Act].

(b) Neither the existence nor the amount of the insurance is subject to discovery.

Civ. Prac. & Rem. Code § 101.104. You claim the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code. Section 101.104 prohibits the discovery and admission of insurance information during a trial under the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code. *See City of Bedford v. Schattman*, 776 S.W.2d 812, 813-14 (Tex. App.—Fort Worth 1989, orig. proceeding) (protection from producing evidence of insurance coverage under section 101.104 is limited to actions brought under Texas Tort Claims Act). However, section 101.104 does not make insurance information confidential for purposes of section 552.101 of the Government Code. *See Open Records Decision No. 551 at 3 (1990)* (provisions of section 101.104 “are not relevant to the availability of the information to the public”). The Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See Gov’t Code §§ 552.005 (Act does not affect scope of civil discovery), .006 (Act does not authorize withholding public information or limit availability of public information to public except as expressly provided by Act); see also Attorney General Opinion JM-1048 (1989); Open Records Decision No. 575 (1990) (overruled in part by Open Records Decision No. 647 (1996)) (section 552.101 does not encompass discovery privileges)*. Thus, we find section 101.104 of the Civil Practice and Remedies Code does not make the information at issue confidential for purposes of section 552.101 of the Government Code. Therefore, the city may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code.

Section 552.136 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 determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, we find the city has failed to demonstrate the submitted information includes any access device numbers pursuant to section 552.136 of the Government Code. The submitted 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.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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/akg

Ref: ID# 633039

Enc. Submitted documents

c: Requestor
(w/o enclosures)