



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2006

Mr. Bruce P. Sadler
Assistant District Attorney
47th Judicial District of Texas
501 South Fillmore, Suite 5A
Amarillo, Texas 79101-2449

OR2006-06041

Dear Mr. Sadler:

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# 251217.

The Armstrong County Judge (the "county") received a request for a use-of-force policy of the county sheriff's department and the county's liability insurance policy. You state that some of the requested information is being made available to the requestor, but claim that the submitted information is confidential under section 101.104 of the Civil Practice and Remedies Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

Initially, we note that the submitted insurance policy is subject to section 552.022 of the Government Code. Under section 552.022(a)(3), information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body is expressly public unless it is expressly confidential under other law. Thus, pursuant to section 552.022(a)(3), the county may only withhold the submitted information if it is confidential under other law. Section 101.104 of the Civil Practices and Remedies Code provides that insurance information is not discoverable or admissible as evidence during litigation proceedings 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

¹We 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.

under section 101.104 is limited to actions brought under Texas Tort Claims Act). Section 101.104 does not make information expressly confidential. *See* Open Records Decision No. 551 at 3 (1990). However, the Texas Supreme Court has determined that the discovery privileges found in the Texas Rules of Civil Procedure and the Texas Rules of Evidence are “other law” for purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Although section 101.104 is a civil discovery privilege under the Civil Practice and Remedies Code, it is not a discovery privilege found in either the Texas Rules of Civil Procedure or the Texas Rules of Evidence. Thus, section 101.104 does not alone or in conjunction with the *Georgetown* decision constitute “other law” for purposes of section 552.022. Accordingly, the county may not withhold the submitted information pursuant to section 101.104 of Civil Practices and Remedies Code.

We note, however, that some of the submitted information is subject to section 552.136 of the Government Code, and this section constitutes other law for purposes of section 552.022.² Section 552.136 of the Government Code states that “[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. The county must, therefore, withhold the insurance policy numbers we have marked under section 552.136.

We also note that the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1937). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the county must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released in accordance with federal copyright laws.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the

²The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

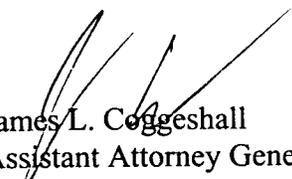
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 251217

Enc. Submitted documents

c: Mr. Chuck Hester
Hester, McGlasson & Cox
1507 Fourth Avenue
Canyon, Texas 79015
(w/o enclosures)