



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 27, 2007

Ms. Meredith Ladd  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2007-08141

Dear Ms. Ladd:

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# 282125.

The City of McKinney (the "city") received a request for information pertaining to "insurance coverage held by the city for lawsuits against the city and lawsuits against city employees for which the city may be responsible for indemnification of its employees." You seek to withhold the submitted information is excepted from disclosure under section 552.103 of the Government Code and section 101.104 of the Civil Practice and Remedies Code. We have considered your arguments and reviewed the submitted information.

We note that section 552.022 of the Government Code is applicable to the submitted information. Section 552.022 provides in relevant part:

- (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 under this chapter unless they are expressly confidential under 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[.]

The submitted insurance policy records consist of information in a contract relating to the expenditure of funds by a governmental body. Thus, pursuant to section 552.022(a)(3), the city may only withhold the submitted insurance policy if it is confidential under other law. You state that the submitted records are excepted from disclosure under section 552.103. However, section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Consequently, the city may not withhold the information at issue under section 552.103 of the Government Code.

You argue that the submitted information is excepted from disclosure section 101.104 of the Civil Practice and Remedies Code. We note that section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, section 101.104 is a civil discovery privilege and does not make insurance information expressly confidential for purposes of section 552.101. *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"); *see also* Attorney General Opinion JM-1048 (1989); *Open Records Decision Nos. 647 at 2 (1996)* (information that may be privileged in the civil discovery context may not be withheld from disclosure pursuant to section 552.101 of the Government Code), *575 at 2 (1990)* (stating explicitly that discovery privileges are not covered under statutory predecessor to section 552.101). Furthermore, although 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' within the meaning of section 552.022," section 101.104 of the Civil Practices and Remedies Code is not such a privilege. *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we determine that the submitted information may not be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code. As you raise no other exception to disclosure of the submitted information, it must be released to the requestor.

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

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).

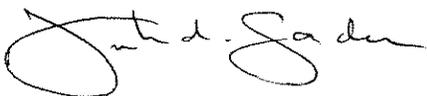
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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. 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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/eeg

Ref: ID# 282125

Enc. Submitted documents

c: Mr. John Quinn  
c/o Meredith Ladd  
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(w/o enclosures)