



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 31, 2008

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2008-14921

Dear Ms. Byles:

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# 326373.

The City of Fort Worth (the "city") received two request for information pertaining to complaints made against the city arising out of flooding at the Villages of Woodland Springs since January 1, 2007 to the present. You state that you have redacted Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state that you are withholding social security numbers under section 552.147 of the Government Code.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.103, 552.107, 552.111, 552.136 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted to this office by one of the requestors. *See* Gov't Code § 552.304 (any person may submit written comments

---

<sup>1</sup>Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

stating why information at issue in request for attorney general decision should or should not be released).

Initially, we note that a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 of the Government Code provides that:

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:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information contains completed reports made for the city. The city must release the completed reports in Exhibit C under section 552.022(a)(1) of the Government Code unless they are excepted from disclosure under section 552.108 of the Government Code or are expressly confidential under other law. You claim that the information subject to section 552.022 is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. Sections 552.103 and 552.111 are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *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 Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7(1987) (statutory predecessor to section 552.111 could be waived). As such, sections 552.103 and 552.111 are not other law that makes information confidential for the purposes of section 552.022(a)(1). Therefore, the city may not withhold the submitted completed reports, which we have marked, under section 552.103 or section 552.111 of the Government Code. As you raise no other exceptions to disclosure for this information, it must be released to the requestor.

You claim the remaining information not subject to section 552.022 is protected under section 552.103, which provides in part:

(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 sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) that the information at issue is related to that 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.); see also 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. See ORD 551 at 4. 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"), Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance.

You inform this office that "[t]o date, the City has received claims with respect to this incident from late 2007 to the summer of 2008. Several individuals have filed claims and/or sued the City over flooding damage to their homes." You have also provided documentation to this office in the form of a letter to the city from a private attorney who states that he represents certain clients who are residents of the Villages of Woodland Springs, that these clients have all experienced severe flooding in their homes, and that a lawsuit has been filed on behalf of these clients. In addition, you assert that "[a]lthough some individuals have received a letter stating that the City is denying their claim, the City expects that some individuals will file suit against it in court as they have now complied with the Texas Tort Claims Act." Based on your representations and our review of the information at issue, we conclude that litigation to which the city is a party was pending on the date the city received the requests for information, and that the city reasonably anticipates additional litigation arising out of matters which are the subject of this request. Further, our review of the submitted responsive information shows that it is related to the pending and anticipated litigation for purposes of section 552.103. Accordingly, the city may generally withhold the information you have submitted as Exhibit C under section 552.103 of the Government Code.

We note, however, that once the information at issue has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. See Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any submitted information that has either been obtained from or provided to the

opposing parties in the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982). In this case, a portion of the submitted information, which we have marked, was either obtained from or provided to the actual or potential opposing parties to the litigation at issue. This information may not be withheld under section 552.103. However, we will address the other exceptions to disclosure you have raised for this information.

We note that the submitted documents contain unredacted information subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 of the Government Code exempts from disclosure information that "relates to ... a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.

In addition, the remaining submitted information contains bank account, credit card, and insurance policy numbers. 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 city must, therefore, withhold the bank account, credit card, and insurance policy numbers we have marked under section 552.136.

Finally, we also note that the remaining submitted information includes personal e-mail addresses. Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We agree that you must withhold the e-mail addresses you have marked under section 552.137 in the information not excepted under section 552.103, unless the owners of the e-mail addresses have consented to their disclosure.

---

<sup>2</sup>The 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).

In summary, the city may withhold Exhibit C under section 552.103 of the Government Code,<sup>3</sup> with the exception of the information we have marked for release under section 552.022(a)(1) and the information that we have marked for release that has been provided to or obtained from the opposing parties to litigation. Within the information marked for release, the city must withhold the Texas motor vehicle information we have marked under sections 552.130, the bank account, credit card, and insurance policy numbers we have marked under 552.136, and the information you have marked under section 552.137. The remaining information marked for release 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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

---

<sup>3</sup>As our ruling for this information is dispositive, we need not address your other arguments against disclosure of this information.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jb

Ref: ID# 326373

Enc. Submitted documents

c: Ms. Anna M. Alvarado  
Hill Gilstrap, P.C.  
1400 West Abram Street  
Arlington, Texas 76013  
(w/o enclosures)