



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2009

Ms. Michelle Weiser  
Schneider, Krugler, Kleinschmidt & Weiser, P.C.  
P.O. Box 507  
Giddings, Texas 78942

OR2009-08199

Dear Ms. Weiser:

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# 346566.

The City of Giddings (the "city"), which you represent, received two requests for information pertaining to an accident that occurred on one of the city's water tanks. The first request seeks a copy of the contract between the city and the contractor hired by the city to perform work on the water tank at issue. The second request seeks photographs of the scene of the accident and injuries sustained due to the accident. We understand you to claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have submitted a recording of a grievance hearing. This information is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release non-responsive information.

Next, you acknowledge that the city previously released the photographs responsive to the second request, which you now seek to withhold under section 552.103. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from the public, unless the information is confidential by law. *See* Gov't Code § 552.007(a); Open Records Decision

Nos. 518 at 3 (1989), 490 at 2 (1988). Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions); *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 section 552.103). As such, section 552.103 does not make information confidential by law. Therefore, the photographs that the city has previously released may not be withheld under section 552.103. As the city raises no other exceptions against the disclosure of the requested photographs, they must be released. We will, however, address the applicability of section 552.103 to the remaining information that has not been previously released.

We note that the remaining information is subject to section 552.022(a)(3) of the Government Code, which provides:

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[.]

Gov't Code § 552.022(a)(3). The remaining information constitutes a contract relating to the expenditure of funds by a governmental body which must be released under section 552.022(a)(3) unless it is confidential under other law. You claim this information is protected under section 552.103 of the Government Code. However, as previously discussed, section 552.103 is a discretionary exception to disclosure that a governmental body may waive. *See* 4 S.W.3d at 475-76; ORD 665 at 2 n.5. As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold the submitted contract under section 552.103 of the Government Code. We note the contract contains information that is subject to section 552.136 of the Government Code.<sup>1</sup> Because section 552.136 is other law for the purpose of section 552.022, we will address the applicability of this exception to the contract.

Section 552.136(b) states that “[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

---

<sup>1</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

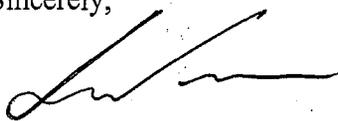
numbers are access device numbers for purposes of section 552.136. Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136.

In summary, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining 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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 346566

Enc. Submitted documents

c: Requestor (2)  
(w/o enclosures)