



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 12, 2010

Mr. Dennis J. Eichelbaum  
Schwartz & Eichelbaum, Wardell, Mehl and Hansen, P.C.  
Counsel for Godley Independent School District  
5300 Democracy Drive  
Plano, Texas 75024

OR2010-02201

Dear Mr. Eichelbaum:

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# 370228.

The Godley Independent School District (the "district"), which you represent, received a request for copies of any insurance policies covering the liability of the district on October 31, 2008. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304(a) (providing that a person may submit comments stating why information should or should not be released).

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

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<sup>1</sup>You also claim that the requestor violated legal ethics by "knowingly communicating directly with the undersigned's client, [the district] and not through [the district's] counsel," and that "the Attorney General should issue an opinion stating such and denying the release of the documents." We note that this issue is beyond the scope of our division's authority in issuing open records decisions. *See* Gov't Code § 552.301(a) (division's authority is limited to determining whether requested information falls within an exception to disclosure). Thus, this ruling is limited to whether the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.

(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[.]

*Id.* § 552.022(a)(3). The submitted insurance policies 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 district may only withhold the submitted insurance policy information if it is confidential under other law. You state that the submitted policies are excepted from disclosure under section 552.103 of the Government Code. However, section 552.103 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 district may not withhold the submitted information under section 552.103. However, because section 552.101 of the Government Code is "other law" for purposes of section 552.022, we will consider whether the district may withhold any of the submitted information under section 552.101.

You contend that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 101.104, however, 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 No. 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). 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." *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, 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.

We note some of the submitted information appears to 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. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright protection 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).

As you raise no other exceptions to disclosure, the submitted information must be released. However, in releasing the information that is subject to copyright, the district must comply with applicable copyright law.

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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/cc

Ref: ID# 370228

Enc. Submitted documents

c: Requestor  
(w/o enclosures)