



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 17, 2010

Mr. Leonard V. Schneider  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056-1918

OR2010-02369

Dear Mr. Schneider:

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# 370536 (09-475).

The City of League City (the "city"), which you represent, received a request for all documents pertaining to a specified development or company. You state that the city will release some of the requested information. You claim that other requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

---

<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with sections 552.101, 552.103, 552.111, 552.117, and 552.137 of the Government Code, section 552.101 does not encompass other exceptions in the Act. Furthermore, although you raise sections 552.101, 552.117, and 552.137 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we presume that you have withdrawn these exceptions. *See* Gov't Code §§ 552.301, .302. You also raise Texas Rule of Civil Procedure 193. We note that this rule instructs a party on how to respond to written discovery. As this provision does not make any information privileged or confidential, we do not address it in our ruling. Finally, although you also argue that the information at issue is privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, we note that, in this instance, sections 552.107 and 552.111 are the proper exceptions for this type of information. *See* Open Records Decision Nos. 677 (2002), 676 at 6 (2002).

<sup>2</sup>We 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.

Initially, we note the city did not fully comply with section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to “ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the tenth business-day after the date of receiving the written request.” Gov’t Code § 552.301(b). While the city raised sections 552.103 and 552.111 within the ten-business-day time period as required by subsection 552.301(b), the city did not raise section 552.107 until after the ten-business-day deadline had passed. Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Section 552.107 is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See* Open Records Decision No. 676 at 11-12 (2002) (attorney-client privilege under section 552.107 and Texas Rule of Evidence 503 subject to waiver). In failing to timely raise section 552.107, we find the city waived its claim under this exception, and none of the information at issue may be withheld on that basis.

We now address your arguments under section 552.103 of the Government Code. Section 552.103 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). The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the department received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref’d n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, that prior to the city's receipt of the present request for information, the requestor's client filed a lawsuit against the city. Therefore, we conclude that litigation was pending when the city received the present request. You also inform us that the lawsuit at issue concerns the company specified in the request. Based on your representations and our review, we agree that the information you have marked is related to the litigation for purposes of section 552.103. Therefore, the city may withhold the information you have marked under section 552.103 of the Government Code.<sup>3</sup>

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>4</sup> See Gov't Code § 552.137(a), (b). The e-mail addresses we have marked are not of a type specifically excluded by section 552.137(c). See *id.* § 552.137(c). Therefore, the city must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owners of the e-mail addresses consent to their release.<sup>5</sup>

In summary, (1) the city may withhold the information you have marked under section 552.103 of the Government Code; and (2) the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses consent to their release. The remaining information must be released to the requestor.

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

---

<sup>3</sup>As our ruling is dispositive of this information, we need not address your arguments under section 552.111 of the Government Code.

<sup>4</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).

<sup>5</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 370536

Enc. Submitted documents

c: Requestor  
(w/o enclosures)