



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 14, 2011

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport
P.O. Box 619428
DFW Airport, Texas 75261-9428

OR2011-02161

Dear Ms. Constantine:

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# 408950.

The Dallas/Fort Worth International Airport Board (the "board") received a request for all information in the lease or concessions file for five specified companies. You claim that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note that some of the submitted information is subject to section 552.022 of the Government Code, which 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:

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

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the board to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

...

(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)(1), (3). In this instance, the submitted information includes a completed audit report made for the board that is subject to section 552.022(a)(1). Further, the submitted information contains lease and permit contracts, payment vouchers, and invoices relating to the receipt or expenditure of public funds by the board that are subject to section 552.022(a)(3). Although the board seeks to withhold information subject to section 552.022 under section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects the 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 section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022(a)(1) and (a)(3). Accordingly, the board may not withhold the types of information we have marked that is subject to section 552.022 under section 552.103 of the Government Code. We note, however, that some of this information is subject to section 552.136 of the Government Code, which is "other law" for the purposes of section 552.022.² Thus, we will consider the applicability of section 552.136 to the information at issue. In addition, we will address your argument under section 552.103 for the information not subject to section 552.022.

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. Accordingly, we find that the board must withhold the bank account and routing numbers we have marked in the documents subject to section 552.022(a)(3) under section 552.136 of the Government Code.³

You claim the remaining information not subject to section 552.022 is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 provides in part:

²The Office of the Attorney General will raise mandatory exceptions, such as section 552.137, on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank checking account and routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

(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.

Id. § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body 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 governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

You state, and provide documentation showing, the board received the request for information after a lawsuit was filed against it in the 14th Judicial District Court of Dallas County, Texas under Cause No. 10-14465. We, therefore, agree that litigation involving the board was pending on the date the board received the request. You also state the requested information is related to the pending litigation because it directly relates to the allegations set forth in the lawsuit regarding the "rent" owed the board under the concession contracts. Based on your representations and our review, we agree the remaining information at issue relates to pending litigation for purposes of section 552.103. Accordingly, the board may generally withhold the remaining information under section 552.103 of the Government Code.

We note, however, once information has been obtained by all the parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information that has either been obtained from or provided to all of the other parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the board must release the types of information we have marked under section 552.022(a)(1) and (a)(3) of the Government Code. However, the board must

withhold the information we have marked under section 552.136 of the Government Code. To the extent all of the board's opposing parties in the litigation have not seen or had access to the remaining information not subject to section 552.022, the board may withhold this information under section 552.103 of the Government Code. To the extent all of the board's opposing parties have seen or had access to the remaining information, it 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, 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/dls

Ref: ID# 408950

Enc. Submitted documents

c: Requestor
(w/o enclosures)