



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 27, 2011

Mr. Ross Fischer
Denton, Navarro, Rocha & Bernal, P.C.
2517 North Main Avenue
San Antonio, Texas 78212

OR2011-05787

Dear Mr. Fischer:

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# 415627.

The City of Castroville (the "city"), which you represent, received three requests from the same requestor for information related to evictions at the Castroville Municipal Airport.¹ You state some of the requested information will be released upon payment. You claim the remaining requested information is excepted from disclosure under sections 552.103, 552.107, 552.111, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note some of the information at issue within Exhibits G-1 and G-2 is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) [T]he 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 You state the city sought and received clarification from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (17). Exhibits G-1 and G-2 contain checks subject to section 552.022(a)(3) and Exhibit G-2 contains court-filed documents subject to section 552.022(a)(17). This information, which we have marked, must be released unless it is expressly confidential under "other law." *See id.* Although you raise section 552.103 of the Government Code for the information at issue, this section is discretionary in nature and thus may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 does not constitute "other law" that makes information expressly confidential for the purposes of section 552.022. Therefore, the city may not withhold the checks relating to receipt or expenditure of public funds or the court-filed documents, which we have marked, under section 552.103. You also state the checks contain bank account information that is subject to section 552.136, which constitutes "other law" that makes information confidential for the purposes of section 552.022. Thus, we will address section 552.136 for this information. We will also consider your argument under section 552.103 for the remaining information that is not subject to section 552.022.

We will address your argument under section 552.103 of the Government Code for the remaining information in Exhibits G-1 and G-2, as well as all of Exhibits G-3 and G-4. 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). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation is pending or reasonably anticipated on the date the governmental body receives the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See 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 from disclosure under section 552.103(a). *See* ORD 551 at 4.

You state that a lawsuit styled *Lois McCasland, Castrovill Airport, Inc. v. Castroville, Texas*, Cause No. 10-07-20139-CV has been filed against the city and is currently pending in the 38th Judicial District Court, Medina County, Texas. You state this case was filed before the city received the requests at issue. Accordingly, we agree litigation to which the city is a party was pending on the date the city received the present requests. Further, we find the information at issue is related to the pending litigation. Thus, we conclude the city may withhold the information not subject to section 552.022 of the Government Code in Exhibits G-1 and G-2 and all of Exhibits G-3 and G-4 under section 552.103 of the Government Code.²

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending 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 been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

Section 552.136 of the Government Code states, "Notwithstanding 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(b); *see also id.* § 552.136(a) (defining "access device"). Upon review, we find the city must withhold the bank account and bank routing numbers we have marked in the

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

information subject to section 552.022 of the Government Code under section 552.136 of the Government Code.³

In summary, the city may withhold the information not subject to section 552.022 of the Government Code in Exhibits G-1 and G-2 and all of Exhibits G-3 and G-4 under section 552.103 of the Government Code. The city must withhold the bank account and bank routing numbers we have marked in the information subject to section 552.022 of the Government Code under section 552.136 of the Government Code. The remaining information subject to section 552.022 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/tf

Ref: ID# 415627

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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 account and bank routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.