



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 4, 2013

Mr. Charles Buenger  
Counsel for the City of Collidge  
Buenger & Associates  
3203 Robinson Drive  
Waco, Texas 76706

OR2013-01976

Dear Mr. Buenger:

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# 477854.

The City of Coolidge (the "city"), which you represent, received a request for the meeting minutes and posted notice from a specified city council meeting, the personnel files for two named individuals, the city's budget for the years 2009 through 2012, all documents reflecting the decision to disband the city's police department in 2010 as a result of budget constraints, and all documents reflecting the Mayor's authority to suspend police officers without action by the city council. You state you have provided the meeting minutes and posted notice for the specified city council meeting to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.102 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note Item (f) contains the meeting minutes of a city council meeting. The minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See Gov't Code* §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of

governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). Although you seek to withhold this information under section 552.103, as a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the submitted minutes of the city council meeting must be released pursuant to section 551.022 of the Government Code.

Next, we note Items (c) and (d) contain the requestor's clients' fingerprints. Access to fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.001 provides, in part, "[i]n this chapter . . . '[b]iometric identifier' means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." Gov't Code § 560.001(1). Section 560.003 provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. However, section 560.002 of the Government Code provides, "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, section 552.002(1)(A) gives an individual or his authorized representative a right of access to his own fingerprint information. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Although you assert this information is excepted from disclosure under sections 552.102 and 552.103 of the Government Code, we note statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the city must release the submitted fingerprints to this requestor under section 560.002 of the Government Code.

Item (d) contains the requestor's client's W-4 form. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential for purposes of section 552.101 of the Government Code. Attorney General Opinion H-1274(1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993).

Subsections (c) and (e) of section 6103 are exceptions to the confidentiality provisions of section 6103(a) and provide for disclosure of tax information to the taxpayer or the taxpayer's designee. *See* 26 U.S.C. § 6103(c), (e)(1)(A)(I) (tax return information may be disclosed to taxpayer), (e)(7) (information may be disclosed to any person authorized by subsection(e) to obtain such information if Secretary of Treasury determines such disclosure would not seriously impair tax administration); *see also Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (26 U.S.C. § 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual's right of access under the federal Freedom of Information Act). Accordingly, the city must release the W-4 form to the requestor pursuant to section 6103 of title 26 of the United States Code.

Next, we note Items (e) and (f) contain information subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless made confidential under this chapter or other law:

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(5). Item (e) and the information we have marked in Item (f) consist of budget and revenue reports, which constitute information used to estimate the need for or expenditure of city funds, and are therefore subject to section 552.022(a)(5) of the Government Code. The city must release information subject to section 552.022(a)(5) unless the information is made confidential under the Act or other law. *Id.* Although you raise section 552.103 as an exception to disclosure of this information, section 552.103 is a discretionary exception that does not make information confidential under the Act. *See 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), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Accordingly, the information at issue may not be withheld under section 552.103 of the Government Code. As you raise no further exceptions to the disclosure of this information, it must be released.

Section 552.103 of the Government Code provides:

(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 the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date of the receipt of the request for information and (2) the information at issue is related to the pending or anticipated 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 have provided documentation showing, that litigation involving the city was pending in the United States District Court for the Western District of Texas prior to the city's receipt of the present request. Further, upon review, we agree that the information at issue is related to the litigation because it pertains to the claims in the lawsuit. Based on your representations and our review, we find the city may withhold the remaining information at issue under section 552.103 of the Government Code.<sup>1</sup>

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. Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the submitted minutes of the city council meeting in Item (f) must be released pursuant to section 551.022 of the Government Code. The city must release the fingerprints in Items (c) and (d) to this requestor under section 560.002 of the Government Code. The city must release the W-4 form in Item (d) to the requestor pursuant to section 6103 of title 26 of the United States Code. With the exception of the information subject to

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.

section 552.022 of the Government Code, the city may withhold the remaining information at issue under section 552.103 of the Government Code.

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,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/bhf

Ref: ID# 477854

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

