



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2013

Mr. Joshua Haley
Staff Attorney
Texas Municipal League Intergovernmental Risk Pool
P.O. Box 149194
Austin, Texas 78714-9194

OR2013-18001

Dear Mr. Haley:

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# 502417.

The Texas Municipal League Intergovernmental Risk Pool ("TML") received two requests for all automobile insurance policies in effect on a specified date for the Corpus Christi Regional Transportation Authority (the "authority"). You claim the requested 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. We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information other statutes make confidential. Section 101.104 of the Texas Civil Practice and Remedies Code provides:

(a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under [the Texas Tort Claims Act].

(b) Neither the existence nor the amount of the insurance is subject to discovery.

Civ. Prac. & Rem. Code § 101.104. Section 101.104 prohibits the discovery and admission of insurance information during a trial under the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code. *See City of Bedford v. Schattman*, 776 S.W.2d 812, 813-14 (Tex. App.—Fort Worth 1989, orig. proceeding) (protection from producing evidence of insurance coverage under section 101.104 is limited to actions brought under Tort Claims Act). However, section 101.104 does not make insurance information confidential for purposes of section 552.101 of the Government Code. *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”). The Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See Gov’t Code §§ 552.005 (Act does not affect scope of civil discovery), .006 (Act does not authorize withholding public information or limit availability of public information to public except as expressly provided by Act); see also Attorney General Opinion JM-1048 (1989); Open Records Decision No. 575 (1990) (overruled in part by Open Records Decision No. 647 (1996)) (section 552.101 does not encompass discovery privileges)*. Thus, we find section 101.104 of the Civil Practice and Remedies Code does not make the information at issue confidential for purposes of section 552.101 of the Government Code. Therefore, TML may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code.

Section 552.103 of the Government Code 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

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 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, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990).*

You inform us TML received the requests for information after a lawsuit was filed against the authority. We note, however, TML is not a party to the pending lawsuit and, therefore, does not have a litigation interest in the matter for purposes of section 552.103. *See Gov't Code § 552.103(a)*; *Open Records Decision No. 575 at 2 (1990)* (stating predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. However, you have not provided this office with an affirmative representation from a governmental body with a litigation interest explaining that it seeks to withhold the submitted information under section 552.103. Accordingly, TML may not withhold any of the information at issue under section 552.103 of the Government Code.

We note the submitted information contains information subject to section 552.130 of the Government Code.¹ Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. *Gov't Code § 552.130(a)(2)*. Accordingly, TML must withhold the partial vehicle identification numbers contained in the submitted information under section 552.130 of the Government Code.² TML must release the remaining information.

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.

¹The 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).*

²We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1* (to be codified as an amendment to *Gov't Code § 552.130(c)*). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See Gov't Code § 552.130(d), (e).*

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 502417

Enc. Submitted documents

cc: 2 Requestors
(w/o enclosures)