



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2016

Ms. Lindsey Wolf
General Counsel
Office of the Secretary of State
P.O. Box 12697
Austin, Texas 78711-2060

OR2016-27246

Dear Ms. Wolf:

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# 636973.

The Office of the Secretary of State (the "secretary's office") received a request for specified documents pertaining to a specified election cycle and certain specified contracts. You state the secretary's office does not have information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor's representative. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion the secretary's office may possess additional information responsive to a portion of the request. We note the Act does not require a governmental body to answer general questions, perform legal research, or create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v.*

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Bustamante, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision No. 561 at 8-9 (1990). In this instance, the secretary's office has submitted information for our review, and states the secretary's office understands the submitted information "to be the only document providing the exact information responsive to the [r]equestor's request in that it details exactly where, how many, and at what actual cost, radio and TV spots were purchased." Therefore, we assume the secretary's office has made a good-faith effort to locate any information responsive to the request at issue, and we will address the claimed exception for the submitted information.

Next, we note the submitted information is 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 unless made confidential under this chapter or other law:

...

(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)(3). The submitted information consists of information in an account, contract, or voucher relating to the expenditure of funds by the secretary's office that is subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(3) under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and 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 Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the secretary's office may not withhold the submitted information under section 552.103 of the Government Code. As no further exceptions against disclosure have been raised, the secretary's office must release the submitted 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.

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 black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/som

Ref: ID# 636973

c: Requestor