



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 5, 2017

Mr. Patrick Lindner
Counsel for the Consolidated Water Supply Corporation
Davidson Troilo Ream & Garza, PC
601 NW Loop 410, Suite 100
San Antonio, Texas 78216-5511

OR2017-07080

Dear Mr. Lindner:

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# 651986.

The Consolidated Water Supply Corporation (the "corporation"), which you represent, received a request for a copy of a specified letter and any information regarding a specified insurance claim. You state the corporation has released some information. 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.

Section 552.103 of the Government Code provides, in relevant part, the following:

(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 has the burden of providing relevant facts and documents to show that the section 552.103(a) exception applies in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information is related to that 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.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

To establish litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect that litigation is “realistically contemplated.” *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (finding that investigatory file may be withheld from disclosure if governmental body attorney determines that it should be withheld pursuant to section 552.103 and that litigation is “reasonably likely to result”). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* ORD 452 at 4.

You assert the submitted information is subject to section 552.103. However, you do not inform our office that, at the time the corporation received the present request, anyone had taken concrete steps toward the initiation of litigation regarding this matter. Although you state the corporation may be a party in “litigation of a civil or criminal nature,” the corporation provided no explanation of any potential action. Upon review, we find the corporation has failed to demonstrate it reasonably anticipated litigation when it received the request for information. Therefore, the corporation may not withhold the submitted information under section 552.103(a) of the Government Code.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of [the Act], 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.”¹ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

an insurance policy number is an access device for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Thus, the corporation must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). The remaining information contains personal e-mail addresses. We are unable to determine whether the personal e-mail addresses at issue, which are located within e-mails we understand are communicating official business of the corporation, belong to officials or employees of the corporation. Further, we are unable to determine whether some of the e-mail addresses at issue are excluded by subsection (c). Thus, we rule conditionally. To the extent the e-mail addresses within the remaining information are not the personal e-mail addresses of government officials or employees and subsection (c) does not apply, the corporation must withhold such e-mail addresses under section 552.137, unless the owners of the e-mail addresses affirmatively consent to their release. However, to the extent the e-mail addresses within the remaining information are the personal e-mail addresses of government officials or employees, or to the extent subsection (c) applies, this information is not excepted from disclosure under section 552.137 and the corporation may not withhold such information on that basis. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of “members of the public” for purposes of Gov’t Code § 552.137(a)).

In summary, the corporation must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. To the extent the e-mail addresses within the remaining information are not the personal e-mail addresses of government officials or employees and subsection (c) does not apply, the corporation must withhold such e-mail addresses under section 552.137, unless the owners of the e-mail addresses affirmatively consent to their release. The corporation 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.

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 that reads "Britni Ramirez". The signature is written in a cursive style with a large, looping "R" at the end.

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/som

Ref: ID# 651986

Enc. Submitted documents

c: Requestor
(w/o enclosures)