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ATTORNEY GENERAL OF TEXAS

October 17, 2017

Mr. R.P. Matthew Allen
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Cordoba Law Firm, PLLC
85 Oak Drive, Suite 102
Lake Jackson, Texas 77566

OR2017-23791

Dear Mr. Allen:

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# 680467.

The Brazosport Water Authority (the "authority"), which you represent, received a request for five categories of information pertaining to the authority's finances during specified time periods and communications between the authority and a specified entity. 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.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, the following:

(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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

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

...

(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;

...

(17) information that is also contained in a public court record; and

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(1), (3), (5), (17)-(18). The submitted information includes a completed report that is subject to subsection 552.022(a)(1). The authority must release the information at issue pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. The submitted information also includes information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to subsection 552.022(a)(3); budget information that is subject to subsection 552.022(a)(5); court-filed documents that are subject to subsection 552.022(a)(17); and a settlement agreement with the authority that is subject to subsection 552.022(a)(18). Although you seek to withhold the information at issue under section 552.103 of the Government Code, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76; Open Records Decisions Nos. 665 at 2 n.5 (2000), 663 at 5 (1999). Therefore, the authority may not withhold any of the information subject to section 552.022, which we have marked and indicated, under section 552.103. However, because section 552.136 of the Government Code makes information confidential for purposes of section 552.022, we will consider the applicability of this exception to the information subject to section 552.022.¹ We will also address your argument against disclosure of the remaining information.

Section 552.136(b) of the Government Code provides, “[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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of

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).

section 552.136. Accordingly, the authority must withhold the insurance policy numbers in the submitted information subject to section 552.022 of the Government Code under section 552.136 of the Government Code.

Section 552.103 of the Government Code provides as follows:

(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.

Id. § 552.103(a), (c). A governmental body 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 (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 that litigation. *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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state lawsuits styled *Brazosport Water Authority vs. Robert Gorka*, Cause No. 17-CCV-060228, and *Brazosport Water Authority vs. Brecole, Inc.*, Cause No. 17-CCV-060002, were pending in County Court at Law No. 2 in Fort Bend County, Texas, when the authority received the instant request for information. You also state a lawsuit styled *Brazosport Water Authority vs. Schramme Family Partnership, Ltd.*, Cause No. 17-CCV-060002, was pending in County Court at Law No. 5 in Fort Bend County, Texas, when the authority received the instant request for information. You state the information at issue is related to the pending lawsuits. Based on your representations and our review of the information at issue, we find litigation was pending when the authority received this request for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the authority may withhold the submitted information not subject to section 552.022 of the Government Code under section 552.103(a) of the Government Code.

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. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the authority must withhold the insurance policy numbers in the submitted information subject to section 552.022 of the Government Code under section 552.136 of the Government Code. The authority may withhold the submitted information not subject to section 552.022 of the Government Code under section 552.103(a) of the Government Code. The authority 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 680467

Enc. Submitted documents

c: Requestor
(w/o enclosures)