



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 2, 2020

Ms. Jessica Marsh  
General Counsel  
Texas Civil Commitment Office  
4616 West Howard Lane, Building 2 Suite 350  
Austin, Texas 78728

OR2020-00114

Dear Ms. Marsh:

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# 802970 (TCCO PIA Nos. 2019-0021 and 2019-0029).

The Texas Civil Commitment Office (the "TCCO") received two requests from the same requestor for information pertaining to the requestor. The TCCO states it will release some information to the requestor. The TCCO claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception the TCCO claims and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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[.]

*Id.* § 552.022(a)(3). The submitted information contains information in an account, contract, or voucher relating to the receipt or expenditure of funds by the TTCO 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.* The TCCO seeks 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 TCCO may not withhold the information subject to section 552.022(a)(3), which we have marked, under section 552.103 of the Government Code. However, because section 552.136 of the Government Code makes information confidential under the Act, we will consider the applicability of this exception to the information at issue.<sup>2</sup> Further, we will consider the TCCO's argument under section 552.103 for the information not subject to section 552.022(a)(3).

The TCCO asserts the information not subject to section 552.022(a)(3) is excepted from disclosure under section 552.103 of the Government Code, which provides, in relevant 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

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<sup>2</sup> The 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).

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 governmental body claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

The TCCO states, and provides documentation showing, an appeal styled *Black v. McLane*, Case No. 07-19-00241-CV, was pending against the TCCO in the Seventh Court of Appeals of Texas when it received the instant request. Therefore, we agree litigation was pending on the date the TCCO received the present request for information. The TCCO also states the information at issue pertains to the substance of the lawsuit claims. Further, the TCCO states the information at issue has not been previously released to the opposing party through the discovery process. Based on the TCCO's representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the TCCO may withhold the information not subject to section 552.022(a)(3) of the Government Code under section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the litigation though discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See Open Records Decision Nos. 349 (1982), 320 (1982).* Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982).*

The information subject to section 552.022(a)(3) includes information that is subject to section 552.136 of the Government Code. Section 552.136 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”). Accordingly, the TCCO must withhold the routing and bank account numbers we have marked under section 552.136 of the Government Code.

In summary, the TCCO may withhold the information not subject to section 552.022(a)(3) of the Government Code under section 552.103 of the Government Code. The TCCO must withhold the routing and bank account numbers we have marked under section 552.136 of

the Government Code. The TCCO must release the remaining information pursuant to section 552.022(a)(3) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Gerald Arismendez  
Assistant Attorney General  
Open Records Division

GAA/gw

Ref: ID# 802970

Enc. Submitted documents

c: Requestor  
(w/o enclosures)