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ATTORNEY GENERAL OF TEXAS

March 7, 2022

Ms. Logan Leal
Counsel for the Harris County Sports and Convention Corporation
Husch Blackwell, LLP
600 Travis Street, Suite 2350
Houston, Texas 77002

OR2021-06828

Dear Ms. Leal:

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# 929434.

The Harris County Sports and Convention Corporation (the "corporation"), which you represent, received a request for four categories of information pertaining to a specified event during a certain date range. The corporation received a second request for license agreements and approval letters for a specified event during a specified year. The corporation claims the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. Additionally, the corporation states release of the submitted information may implicate the proprietary interests of ASM Global/SMG; Code 4 Event Management; and ScoreMore Holdings, LLC. Accordingly, the corporation states, and provides documentation showing, it notified these third parties of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted arguments and the submitted information.

Initially, we note the second requestor seeks only license agreements and approval letters for a specified event. Accordingly, the remaining submitted information is not responsive to the second requestor's request. The corporation is not required to release this information to the second requestor in response to the second request.

Next, we note some of the submitted information was the subject of a previous ruling from this office. In Open Records Letter No. 2022-03663 (2022), we determined, in relevant part, the corporation must release the information at issue. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007. The corporation now seeks to withhold the information previously ordered released under sections 552.101 and 552.103 of the Government Code. Section 552.103 of the Government Code is discretionary 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 section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the corporation may not withhold any of the previously released information under section 552.103. However, section 552.101 can make information confidential under the Act. Thus, we will consider the applicability of this exception to this information. We will also consider the corporation's arguments under sections 552.101 and 552.103 of the Government Code for the information not subject to the previous request.

We also note the corporation received the two requests for information in close temporal proximity. Further, we note the corporation requested rulings from this office under section 552.301 of the Government Code on December 2, 2021, and December 3, 2021. The corporation seeks to withhold the remaining information at issue from the first requestor under sections 552.101 and 552.103 of the Government Code but has not sought to withhold this same information from the second requestor. Thus, we assume the corporation will release the information at issue to the second requestor. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). As noted above, section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Although the corporation raises section 552.103 for the information, this section is a discretionary exception and does not make information confidential. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76; ORD 542 at 4; *see also* ORD 665 at 2 n.5. Thus, the corporation may not withhold information from one requestor under section 552.103 that it has released to the other requestor. Accordingly, with respect to the information the corporation releases to the second requestor, the corporation may not withhold such information from the other requestor under section 552.103 of the Government Code. However, because section 552.101 of the Government Code can make information confidential, we will address the applicability of this exception to the information at issue.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to

why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any third party has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the corporation may not withhold the submitted information on the basis of any proprietary interest any third party may have in the information.

Section 552.103 of the Government Code 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 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). 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 corporation states, and provides documentation showing, prior to its receipt of the first request, multiple lawsuits were filed and are currently pending against the corporation. Therefore, we agree litigation was pending on the date the corporation received the first request for information. The corporation also states the information at issue pertains to the substance of the lawsuit claims. Based on these representations and our review, we find the information at issue is related to the pending litigation. Therefore, the corporation may withhold the information we have marked under section 552.103 of the Government Code.¹

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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 been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that is made confidential by other statutes. The corporation raises section 552.101 in conjunction with sections 418.176 and 418.177 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. Section 418.176 of the HSA provides in relevant part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers of the provider.

Id. § 418.176(a). Section 418.177 provides,

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. Section 418.181 provides,

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181. The fact that information may be related to a governmental body's security concerns does not make such information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

We understand the corporation to assert, and we agree, the information at issue is part of the corporation's critical infrastructure for the purposes of section 418.181 of the Government Code. *See id.* § 421.001 (defining "critical infrastructure" to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). Based on this representation and our review, we find a portion of the remaining information at issue would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the corporation must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.² However, we find the corporation has not demonstrated any portion of the remaining information is confidential for the purposes of section 418.176, 418.177, or 418.181. Therefore, the corporation may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with sections 418.176, 418.177, or 418.181 of the Government Code.

In summary, the corporation may withhold the information we have marked under section 552.103 of the Government Code. The county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. 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 <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

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/jm

Ref: ID# 929434

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

3 Third Parties
(w/o enclosures)