



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 24, 1994

Mr. Charles Karakashian, Jr.  
Assistant General Counsel  
Texas Department of Public Safety  
P. O. Box 4087  
Austin, Texas 78773-0001

OR94-131

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 23000.

The Texas Department of Public Safety (the "department") received a request for the following information:

1. Any and all documents pertaining to motor vehicle accidents involving [1990-1993 Chevrolet Caprice Classic patrol vehicles] . . . owned by the State of Texas and/or operated by agents or employees of the Texas Department of Public Safety in which the driver or passenger was injured;
2. Documents referring to known, suspected, potential and actual defects in the brakes, seat belts, airbags, or seats of the referenced Chevrolet Caprice Classic vehicles;
3. Reports received from other agencies which concern equipment defects in the brakes, seat belts, airbags, or seats of the referenced Chevrolet Classic vehicles;
4. Reports received from other agencies pertaining to motor vehicle accidents involving any of the above referenced vehicles in which the driver or passenger was injured.

You enclose two sets of documents as samples of information the department maintains that are responsive to this request which you have marked as exhibits "B" and "C." You say these files are from the tort litigation files in the department's legal office. Exhibit "B" contains documents from an open claim file arising out of an accident involving a 1992 Chevrolet Caprice owned by the department. Because this claim against the department is pending, you assert that the litigation exception applies to the information in exhibit "B."

The "litigation exception," section 552.103(a)(1) of the act, excepts from required public disclosure information "relating to . . . settlement negotiations, to which the state or a political subdivision is or may be a party . . . ." The documents indicate that the department is negotiating a settlement of this claim. You may withhold the information that relates to these negotiations, exhibit "B," under section 552.103(a), with one exception, as follows.<sup>1</sup> The officer's accident report is a public record pursuant to V.T.C.S. article 6701d(c). Information specifically made public by statute does not come within section 552.103(a). *See* Open Records Decision No. 161 (1977). Thus, you must release the accident report contained in exhibit "B."

Exhibit "C" is a closed file on a claim arising out of an automobile accident involving a Chevrolet Caprice driven by a department trooper. You seek to withhold portions of this file based on sections 552.107(1) and 552.111 of the Government Code.

Section 552.107(1) excepts from required public disclosure:

information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Under this provision, a governmental body may withhold communications between a client and an attorney that reveal client confidences or that contain legal advice or opinion. *See* Open Records Decision No. 574 (1990). Communication of factual material from attorney to client is not protected. *See id.* We have marked the documents in exhibit "C" to which section 552.107(1) applies.

Section 552.111 protects:

[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

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<sup>1</sup>While section 552.103(a)(1) excepts from required public disclosure information relating to "settlement negotiations," the exception does not extend so far as to except the final terms of the settlement. Open Records Decision No. 114 (1975).

This exception applies to internal communications consisting of advice, recommendations, or opinions reflecting the policymaking processes of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of a memorandum. *See id.* at 4-5. We have marked the portions of exhibit "C" to which section 552.111 applies.

You say that the department may have additional information that is responsive to this request in its fleet accident files; however, you say that the fleet accident files (of which, you inform us, there are over one thousand) are not organized according to the model of the automobile involved, so that the department would need to manually search each accident file to determine if a Chevrolet Caprice was involved in the accident. You say the act does not require the department to conduct such a search and that this request would require the department to create new information.

Complying with this request does not require the department to create new information, but to search among the fleet accident files it maintains for files on accidents involving Chevrolet Caprice automobiles. Moreover, the act does not permit the custodian of records to consider the method of supplying requested information in determining whether such information should be disclosed. *See Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In fact, the act contemplates situations in which supplying the requested information poses a financial problem for the governmental body. Section 552.263 provides that:

An officer for public records or the officer's agent may require a bond for payment of costs or cash prepayment of anticipated costs for the preparation of a public record if the preparation of the record would be unduly costly and its reproduction would cause undue hardship to the department or agency if the costs were not paid.<sup>2</sup>

Thus, before beginning the requisite search, the department may require advance cash payment or a cost bond "if the preparation of the record would be unduly costly and its

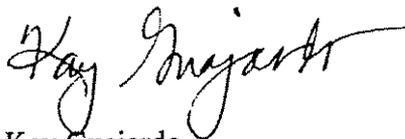
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<sup>2</sup>Whether the preparation of the record would be unduly costly or its reproduction would cause undue hardship to the department if the costs were not paid is a question of fact. This office cannot resolve such questions of fact. *See* Open Records Decision No. 426 (1985).

reproduction would cause undue hardship to the department . . . if the costs were not paid."<sup>3</sup>

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/rho

Ref.: ID# 23000  
ID# 23205  
ID# 23312  
ID# 24528

Enclosures: Submitted documents

cc: Mr. Randall C. Jackson, Jr.  
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(w/o enclosures)

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<sup>3</sup>In addition, section 552. 262 of the Government Code generally requires an applicant for public records to pay the costs of legal-size or smaller photocopies of public records, including the cost of materials, labor, and overhead.