



February 28, 2001

Ms. Janice Mullenix
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2001-0748

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144530.

The Texas Department of Transportation (the "department") received a request for ten items and/or categories of information, as follows:

1. DEPT. BACKING POLICY
2. COPIES OF ALL MY EMPLOYEE EVALUATIONS SINCE HIRE
3. DEPT. PROGRESSIVE DISCIPLINE POLICY
4. SUPERVISOR'S RESPONSIBILITY/AUTHORITY IN DISCIPLINARY ACTIONS
5. NEO/ADA INFORMATION
6. DEPT. POLICY REGARDING EMPLOYEES WITH DISABILITIES (HUMAN RESOURCES MANUAL)
7. LIST OF OTHER DISTRICT EMPLOYEE ACCIDENTS OVER LAST 3 YEARS AND DISCIPLINARY ACTION TAKEN
8. COPY OF EMPLOYEE HANDBOOK
9. COPY OF MY PROBATION REQUIREMENTS
10. COPY OF SAFETY VIDEOS I VIEWED WHILE ON PROBATION

You submitted to this office only one report, entitled "TxDOT Vehicular Accident Report," which appears to be responsive to request item number seven. You have not, however,

submitted any other accident reports that are responsive to item number seven. Furthermore, you have not submitted any information that is responsive to any of the nine other request items. We, therefore, presume that, to the extent that additional responsive information exists, you have released that information to the requestor. *See* Gov't Code §§ 552.301, .302. You seek to withhold the submitted report under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the document at issue.

We believe that the submitted report is expressly made public by section 552.022 of the Government Code. Section 552.022 states in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law[.]

Gov't Code § 552.022. One such category of expressly public information under section 552.022 is "a completed report . . . made of, for, or by a governmental body, except as provided by Section 552.108[.]" Gov't Code § 552.022(a)(1). The submitted accident report is a completed report made by the department. Therefore, as prescribed by section 552.022, the it must be released to the requestor unless it is confidential under another law or excepted from disclosure under section 552.108.

You contend that the submitted report is excepted from disclosure under section 552.103 of the Government Code. Section 552.103, the "litigation exception," is a discretionary exception and not "other law" for purposes of section 552.022.¹ Therefore, we need not address your arguments under section 552.103. Because you have not raised any other exceptions to disclosure, we conclude that the submitted report must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 144530

Encl. Submitted documents

cc: Mr. Michael Bayliff
4213 Kingsbury Drive
Wichita Falls, Texas 76309
(w/o enclosures)