



July 6, 2001

Mr. Brett Bray
Division Director
Motor Vehicle Division
Texas Department of Transportation
P.O. Box 2293
Austin, Texas 78768

OR2001-2898

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149136.

The Texas Department of Transportation (the "department") received a request for copies of all correspondence from Greenspoint Dodge of Houston ("Greenspoint"), all information that the department has asked Greenspoint to produce and the results of a specified investigation. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the submitted information is excepted from disclosure pursuant to section 552.103 of the Government Code. Section 552.103 provides in pertinent 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.

Gov't Code § 552.103. The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *see also 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). The department must meet both prongs of this test for information to be excepted under section 552.103(a). Contested cases conducted under the Administrative Procedure Act (the "APA"), chapter 2001 of the Government Code, are considered litigation under section 552.103. *See* Open Records Decision No. 588 at 7 (1991).

You state that the Texas Motor Vehicle Board (the "Board") is authorized to investigate complaints concerning violations of the Motor Vehicle Commission Code. *See* V.T.C.S. art. 4413(36), § 3.05(a) (Vernon Supp. 2001). Proceedings conducted by the Director of the Board are subject to the APA. *See* V.T.C.S. art. 4413(36), § 3.08(a). You state that the Enforcement Section has commenced an action against Greenspoint for violations of the Motor Vehicle Commission Code. *See id.* Therefore, based on your representations and our review of the submitted information, we conclude that you have demonstrated that the department is involved in litigation with Greenspoint. Accordingly, the first prong of section 552.103 has been satisfied. We also find that you have adequately explained how the submitted information relates to the subject matter of the litigation. Accordingly, the second prong of section 552.103 has been satisfied. However, once information has been provided to all parties to the litigation, through discovery or otherwise, no section 552.103 interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We note that only a portion of the submitted information has not been seen by or generated by Greenspoint. Accordingly, we have marked the information that you may withhold from disclosure pursuant to section 552.103 of the Government Code.¹

You also claim that the submitted information is excepted from disclosure pursuant to sections 552.107 and 552.111 of the Government Code. Section 552.107 excepts from disclosure information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions. *See* Open Records Decision No. 574

¹ 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).

at 5 (1990). Section 552.111 excepts from disclosure an attorney's work product if a governmental body can demonstrate that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. *See* Open Records Decision No. 647 (1996). However, neither of these exceptions protect information that has been disclosed to third parties. *See generally* Open Records Decision No. 630 at 4 (1994) (finding attorney-client privileges waived when governmental body voluntarily discloses privileged material to third party). Since the remaining information has either been seen by or generated by Greenspoint, it is not excepted from disclosure pursuant to section 552.107 or 552.111 of the Government Code.

You also claim that the submitted information contains social security numbers that are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 51.251 of the Occupations Code.² The relevant note to that statute provides:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

Occ. Code § 51.251. It does not appear, nor do you explain, how section 51.251 applies to the submitted social security number. Furthermore, the social security number at issue pertains solely to the requestor. Pursuant to section 552.023 of the Government Code, an individual has a limited special right of access to information when the only basis for excepting the information from disclosure involves the protection of the same individual's privacy interest. *See* Gov't Code § 552.023; *see also* Open Records Decision No. 481 (1987). Therefore, you may not withhold the requestor's social security number from disclosure.

However, we note that portions of the remaining information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Some of the submitted documents contain vehicle identification numbers. Accordingly, with the exception of the requestor's vehicle identification number which you must release pursuant to section 552.023, you must withhold the marked vehicle identification numbers from disclosure pursuant to section 552.130 of the Government Code.

² Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

In summary, you may withhold from disclosure the information that we have marked pursuant to section 552.103 of the Government Code. You must withhold from disclosure the information that we have marked pursuant to section 552.130 of the Government Code. You must release all remaining information to the requestor.

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 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).

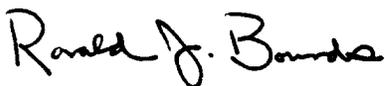
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive style with a large initial 'R'.

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 149136

Enc. Marked documents

c: Ms. Glenda Hayward
11355 Richmond Avenue #316
Houston, Texas 77082
(w/o enclosures)