



January 17, 2002

Mr. Pete Eckert  
Attorney for the City of Rockwall  
Caso Egelston & Eckert  
10246 Midway Road, Suite 202  
Dallas, Texas 75229

OR2002-0287

Dear Mr. Eckert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157508.

The City of Rockwall (the "city"), which you represent, received a request for information regarding the investigation of a motor vehicle accident which occurred on March 4, 2001 in the 2900 block of Oak Drive. The requestor also asked for information on a named Rockwall police officer as well as information on any Rockwall police officers who responded to the accident. Lastly, the requestor asked for a copy of police training manuals, police policy and procedures manuals, as well as any police department special orders in effect on March 4, 2001. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We also received written comments from the requestor. *See* Gov't Code § 552.304 (providing that interested person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.103 provides as follows:

- (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.

The city 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *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 city must meet both prongs of this test for information to be excepted under section 552.103(a). In this instance, the city is not a party to the pending litigation. To warrant protection under section 552.103, the information must be related to pending or reasonably anticipated litigation *to which the state or political subdivision is a party*. Open Records Decision No. 575 at 2 (1990). Accordingly, the requested information may not be withheld under section 552.103.

You state that if we determine that the litigation exception is inapplicable to the information requested, you will release information responsive to request items 1-5, less the information the requestor states he does not wish to obtain: officers' "personal address, personal phone number, identification of family members, the officer's drivers license, photographs of the officer, his social security number, personal financial information, or any other matter exempted from the disclosure requirements of the Texas Public Information Act, and the documents hereby requested may be redacted in order to prevent the disclosure of such information." The listed information, which is therefore non-responsive, may be withheld. See Gov't Code §§ 552.101, 552.117, 552.119, and 552.130.

We note that the personnel file contains other information which must be withheld. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Accordingly, you must withhold any Texas driver's license number, vehicle identification number, and license plate number under section 552.130. We have marked the Texas driver's license, vehicle identification, and license plate numbers which must be withheld under 552.130.

Some of the information in the personnel files is confidential under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is protected by other statutes. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the city with two of the three pieces of information. Thus, you must withhold the marked accident reports under section 550.065(b).

We also note that the submitted documents contain information which is confidential under section 552.101 in conjunction with the common law right to privacy. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under constitutional or common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the information which must be withheld under section 552.101 in conjunction with common law privacy.

You claim section 552.108 excepts from disclosure request items 6, 7 and 8. Section 552.108 of the Government Code provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the release of the procedures and guidelines covered by the "Rockwall Police Department General Orders" and the "Recruit Officer's Manual" would unduly interfere with law enforcement. After careful review of these documents, we conclude that the release of portions of the Rockwall Police Department General Orders would interfere with the detection, investigation, or prosecution of crime. *See* Open Records Decision No. 531 (1989). We have marked the portions of the General Orders the city may withhold from disclosure based on section 552.108 of the Government Code. However, we find that the city has failed to explain how the release of the "Recruit Officer's Manual" or the remaining information in the General Orders would interfere with the detection, investigation, or prosecution of crime. Consequently, the city may not withhold the manual or the remaining information in the General Orders from disclosure based on section 552.108.

In summary, the city may not withhold the requested information under section 552.103. The city may or must withhold the portions of the responsive information which we have marked in accordance with sections 552.101, 552.108, and 552.130 of the Government Code. The remainder of the responsive information must be released 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).

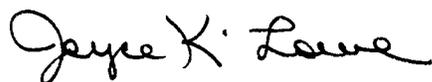
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Joyce K. Lowe  
Assistant Attorney General  
Open Records Division

JKL/sdk

Ref: ID# 157508

Enc: Submitted documents

c: Mr. Ron G. MacFarlane, Jr.  
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(w/o enclosures)