



January 25, 2002

Mr. Gary W. Smith
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2002-0359

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 157952.

The City of Baytown (the "city") received a request for information concerning a certain automobile accident involving a city employee, including the following information:

any statements taken from [the requestor's] client, or any witnesses or anyone involved in the incident and any other information which you are relying on to evaluate the liability for damages in this case. Your written position accepting or denying liability for this incident is also requested in response to this letter. . . . Any documents and information which you may have related to my client's damages in this claim, . . . and copies of any and all photographs taken of any and all vehicles involved in this incident, as well as a copy of the law enforcement incident report, if any. Also, . . . documentation regarding the limits of liability afforded under your insureds (sic) policy of insurance, including a copy of all declarations of coverages.

You inform us that the city will release to the requestor the accident report. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin with a procedural matter. You failed to submit to this office two items specifically requested, copies of the photographs and the insurance information. The Act requires a governmental body to submit to this office various information in making a request for an open records ruling, including a copy of the specific information requested or a representative sample of the information if the information is voluminous. Gov't Code § 552.301(e)(D). Failure to comply with this requirement results in the legal presumption that the information is public unless the governmental body establishes a compelling reason for withholding the information from disclosure. *See id.* § 552.302. You have shown no compelling reason for withholding this information. Furthermore, without a review of the information, we cannot determine the applicability of the exceptions you raise. Accordingly, we find that the city must release to the requestor the copies of the photographs as well as the insurance information.¹ *See id.*

As for the request for “[y]our written position accepting or denying liability for this incident is also requested in response to this letter,” we deem this to be a question. The Act does not require a governmental body to prepare answers to a question. *See* Open Records Decision No. 555 at 1-2 (1990). Consequently, the Act does not require the city to respond to this question.

The submitted information for which you bring your claims consists of a three-page city police department document, which you refer to as the “police incident report.” We believe this report is subject to section 552.022 of the Act. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. One such category is a completed report, audit, evaluation, or investigation made of, for, or by a governmental body. *See* Gov't Code § 552.022(a)(1). The report must therefore be released under section 552.022 unless the information is expressly made confidential under other law. Section 552.103 of the Government Code, the litigation exception, is a discretionary exception under the Act and does not constitute “other law” for purposes of section 552.022.² *See* Open Records Decision No. 663 (1999). Thus the city may not withhold the report from the requestor based on section 552.103.

However, section 552.130 is other law for purposes of section 552.022 of the Act. Section 552.130 provides in relevant part:

¹As you made specific arguments for withholding the insurance information, we assume that it exists. We also understand from your comments to this office that responsive photographs exist.

²Discretionary exceptions are those exceptions, for which, as the name suggests, a governmental body has the discretion to withhold requested information. In contrast, mandatory exceptions protect information deemed confidential by law. *See generally* 2002 Public Information Handbook at 42-43 (2002).

(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[.]

You must withhold the Texas driver's license numbers, vehicle identification numbers, and license plate numbers under section 552.130.

In summary, the city must withhold the information subject to section 552.130. The city must release the 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).

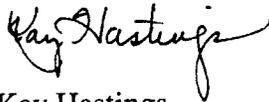
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 157952

Enc. Submitted documents

c: Mr. Paul Wesley Klinger, Jr.
15141 Lakeview Drive
Baytown, Texas 77520
(w/o enclosures)