



June 11, 2002

Mr. Ron G. MacFarlane, Jr.
Sifford, Anderson, Vice & MacFarlane
2001 Bryan Street, Suite 2050
Dallas, Texas 75201

OR2002-3160

Dear Mr. MacFarlane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164156.

The Cedar Hill Police Department (the “department”), which you represent, received a request for “any and all documents” relating to a motorcycle accident on September 20, 2001. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(b) of the Government Code, a governmental body that receives a written request for information that it wishes to withhold from public disclosure must ask for the attorney general’s decision and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. You state that the department received this request for information on March 22, 2002. Thus, the department was required to submit its request for a ruling no later than April 5, 2002. We received your request for a decision on April 8, 2002. Under section 552.308, the ten-day requirement is met if the governmental body’s request for a decision bears a post office cancellation mark indicating a time within the ten-day period, or if the governmental body furnishes satisfactory proof that the request was deposited in the mail within that period. Gov’t Code § 552.308(a). The envelope containing your request for a decision did not bear a post office cancellation mark at all. On May 30, 2002 this office requested that the department submit proof of the date your request for a decision was mailed. In response to our request, you submitted a sworn affidavit certifying that your request was mailed on April 5, 2002. Accordingly, we find that you have submitted satisfactory proof that your request for a decision from this office was timely mailed. *See* Gov’t Code §§ 552.301(d), .303(c), .308(a). Therefore, we will address your exceptions to disclosure.

Initially, however, we note that the submitted information includes court documents. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). The department must release court-filed documents to the requestor.

Next, we note that the documents you seek to withhold include an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides 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 body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the department with the date of the accident, the name of a person involved, and the specific location of the accident. Thus, the department must release the accident report under section 550.065(b) of the Transportation Code.

Section 552.103 of the Government Code 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.

A governmental body 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 was pending or reasonably anticipated on the date the governmental body received the request for information, 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). A governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

You have submitted a copy of the Plaintiff's Original Petition in *Delecia Anderson, et al., v. City of Cedar Hill and Officer Adrian Saldana*, Cause No. 01-08946, filed October 16, 2001 in the Dallas County District Court. You indicate that the department, as the city agency involved in the lawsuit and the employer of the officer named as a defendant, is a party to the lawsuit. You also explain that the motorcycle accident at issue is the subject of both the present request for information and the pending lawsuit. Based our review of the submitted information, we conclude that the department was involved in pending litigation on the date it received the present request for information. Further, we conclude that the submitted information is related to the pending litigation. Therefore, the department may withhold this information under section 552.103 of the Government Code.

We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all opposing parties in all the pending lawsuits is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). As we address all of the information under section 552.103, we do not reach your claim under section 552.108 of the Government Code.

In summary, documents filed with a court are public and must be released to the requestor. The marked accident report form must be released pursuant to section 550.065 of the Government Code. The department may withhold the remaining submitted information under section 552.103 of the Government Code.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/sdk

Ref: ID# 164156

Enc: Submitted documents

c: Mr. Erich J. Savitch
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(w/o enclosures)