



October 30, 2002

Ms. Catherine C. Kemp
Records Supervisor
Rowlett Police Department
P.O. Box 370
Rowlett, Texas 75030-0370

OR2002-6174

Dear Mr. Kemp:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171401.

The Rowlett Police Department (the "department") received a request for information regarding a particular traffic accident and arrest. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that included among the documents you seek to withhold is 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) states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the 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 provided the department with two of the three pieces of information. Thus, the department must release the accident report, which we have marked, in accordance with section 550.065(c)(4) of the Transportation Code.

We will now address your claimed exception with respect to the remaining submitted information. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The purpose of section 552.103 is to protect a governmental body's position in litigation by forcing parties to obtain information relating to the litigation through the discovery process. Open Records Decision No. 551 (1990). A governmental body that is a party to pending litigation has discretion to determine whether it should claim section 552.103 for information related to the litigation. *See id.*; Open Records Decision No. 511 (1988). You argue that, as litigation is likely to ensue between the individuals involved in the traffic accident at issue, the requested information should be withheld under section 552.103. However, as you acknowledge, the department would not be a party to any such litigation. Consequently, the department has no section 552.103 interest in information related to the litigation. *See* Open Records Decision No. 392 (1983). Thus, we conclude that the remaining information may not be withheld under section 552.103 of the Government Code.

We note, however, that the remaining documents contain information that must be withheld under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information relating to a driver's license, license plate, or motor vehicle title or registration issued by an agency of this state. Therefore, we have marked the information in the submitted documents that must be withheld under section 552.130.

Finally, we note that the remaining submitted documents contain social security numbers that may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act (the "Act") on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

To summarize: (1) the department must release the accident report, which we have marked, under section 550.065(c)(4) of the Transportation Code; (2) we have marked the information in the remaining documents that must be withheld under section 552.130; and (3) prior to releasing any social security number information, you should ensure that no such information

was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. The remaining information 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 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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 171401

Enc: Submitted documents

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(w/o enclosures)