OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

November 12, 2002

Ms. Melissa L. Barloco
Assistant County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2002-6388

Dear Ms. Barloco:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172052.

The Harris County Human Resources and Risk Management (the "county") received a written request for a certain written report pertaining to an individual's fall and resulting injury in the county jail. You contend that the requested information is excepted from required public disclosure pursuant to section 552.103 of the Government Code.

We note, however, that the release of the requested report is specifically made subject to section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part as follows:

> (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
>
> > (1) a *completed report*, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108. [Emphasis added.]

The submitted report constitutes a "completed report" made public under section 552.022(a)(1). Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.--Dallas 1999, no pet.); Open Records Decision No. 542 at 4 (1990) (governmental body may waive section

552.103). Therefore, the county may withhold the report only if it is made confidential under other law for purposes of section 552.101 of the Government Code or is excepted from disclosure under section 552.108 of the Government Code. Although you cite to both of these provisions in your brief to this office, you have provided no explanation, nor is it apparent to this office, as to how either of these exceptions apply to the records at issue. We therefore conclude that the report must be released to the requestor in its entirety pursuant to section 552.022(a)(1) of the Government Code.[1]

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).

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[1]We note that although the report contains the driver's licence number of the injured party, *see* Gov't Code § 552.130(a)(1) (requiring withholding of driver's license information), in this instance the requestor has a special right of access to that information pursuant to section 552.023 of the Government Code.

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,

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/lmt

Ref: ID# 172052

Enc: Submitted documents

c: Mr. Edward A. Mallett
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(w/o enclosures)