



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2005

Ms. Jo-Christy Brown
Brown & Carls, L.L.P.
106 East Sixth Street, Suite 550
Austin, Texas 78701

OR2005-11565

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 238660.

The City of Lampasas (the "city") received a request for information pertaining to the death of a child from a representative of the Central Texas Child Fatality Review Team. 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 the documents you seek to withhold include an ST-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). 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 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. 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 the present request, the requestor has provided all three pieces of the required information for the accident report. Accordingly, the city must release this accident report pursuant to section 550.065(c).

Next, we note the requestor's representation that he is requesting the information at issue on behalf of a Texas child fatality review team. Subchapter F of chapter 264 of the Family Code relates to child fatality review and investigation. *See* Fam. Code § 264.501 *et seq.* The purpose and duties of a child fatality review team include "developing an understanding of the causes and incidence of deaths in the county or counties in which the review team is located." *Id.* § 264.506(a)(3). A child fatality review team is required to "meet on a regular basis to review child fatality cases and recommend methods to improve coordination of services and investigations between agencies that are represented on the team." *Id.* § 264.506(b)(2). Furthermore, section 264.508 provides "[t]he review team of the county in which the injury, illness, or event that was the cause of the death of the child occurred, as stated on the child's death certificate, shall review the death." *Id.* § 264.508(a). Section 264.509 provides in relevant part:

(a) A review team may request information and records regarding a deceased child as necessary to carry out the review team's purpose and duties. Records and information that may be requested under this section include:

- (1) medical, dental, and mental health care information;
- (2) information and records maintained by any state or local government agency, including:
 - (A) a birth certificate;
 - (B) law enforcement investigative data;
 - (C) medical examiner investigative data;
 - (D) juvenile court records;
 - (E) parole and probation information and records; and
 - (F) child protective services information and records.

(b) On request of the presiding officer of a review team, the custodian of the relevant information and records relating to a deceased child shall provide those records to the review team.

Id. § 264.509(a), (b). The remaining submitted documents consist of law enforcement investigative data relating to the death of a child. Section 264.509(a) provides that a child fatality review team shall have access to law enforcement records as necessary to conduct its duties. Section 264.509(b) states that, upon request of the presiding officer of the review team, the custodian of the "relevant information and records" shall provide the records to the

review team. Thus, the remaining information is necessary for the child fatality review team to conduct its duties. We are unable to determine whether the requestor is the presiding officer of the child fatality review team. However, to the extent the requestor is the presiding officer of a child fatality review team, he has a right of access to the remaining information at issue under section 264.509 and the city may not withhold it under section 552.103.¹ To the extent the requestor does not have a right of access under section 264.509, we will address your claim under section 552.103.

Section 552.103 provides in relevant part 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 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.

Gov't Code § 552.103(a), (c). 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 that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. 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 section 552.103(a).

You state that the remaining information pertains to an accident that occurred last year. You further explain, and provide documentation showing, that the city received a notice for claim of damages related to that accident prior to the date on which the city received the instant

¹Under the rules of statutory construction, a specific statute prevails over a more general statute. Gov't Code § 311.026; *City of Dallas v. Mitchell*, 870 S.W.2d. 21 (Tex. 1994); see Open Records Decision Nos. 478 (1987) at 2-3 (predecessor to Act does not govern special rights of access granted under other statutes); 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under predecessor to Act); 43 (predecessor to section 552.103 inapplicable to report made public by statute).

request for information. Based on your arguments and our review of the remaining information, we find that the city reasonably anticipated litigation on that date it received the request for information and that this information is related to that anticipated litigation. As such, we conclude the city may withhold the remaining information under section 552.103 of the Government Code.

Generally, however, 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 the opposing party in the anticipated litigation 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).

In summary, the city must release the submitted ST-3 accident report under section 560.065 of the Transportation Code. To the extent the requestor has a right of access to the remaining submitted information under section 264.509 of the Family Code, the city must release the remaining information to the requestor. To the extent the requestor does not have a right of access under section 264.509, the remaining information may be withheld 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/segh

Ref: ID# 238660

Enc. Submitted documents

c: Mr. Earl Lloyd
Central Texas Child Fatality Review Team
P.O. Box 145
Belton, Texas 76513
(w/o enclosures)