



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2006

Ms. Rachel Boates
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002

OR2006-00268

Dear Ms. Boates:

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# 239956.

The Harris County Constable Precinct 4 (the "constable") received a request for information relating to a specified incident involving a named individual. You inform us that some of the requested information has been released. You have submitted information that you claim is excepted from disclosure under sections 552.103 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.¹

We initially note that the submitted documents 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 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 Texas Department of Public Safety

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the constable to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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 of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the constable with two of the three specified items of information. Therefore, the constable must release the accident report, which we have marked, under section 550.065(c)(4) of the Transportation Code.

The submitted documents also include a completed report that is subject to section 552.022 of the Government Code. Section 552.022 provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,” unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov’t Code § 552.022(a)(1). You do not seek to withhold the completed report under section 552.108. Section 552.103, which you do claim, is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See* Gov’t Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the constable may not withhold any of the information contained in the report under section 552.103 of the Government Code.

With respect to the remaining information, we next address your claim under section 552.103. This exception provides in part:

(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.

Gov’t Code § 552.103(a), (c). A governmental body that raises section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex.*

Legal Found., 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.”² *Id.* In this instance, you assert that the remaining information relates to anticipated litigation to which Harris County (the “county”) or the constable would be a party. You inform us that the county owns and insures a vehicle that was involved in the incident to which the remaining information pertains and that the constable employs a deputy who was involved in the incident. You also state that the constable has been advised in writing by an attorney for the other party involved in the incident that “[the constable] is legally responsible.” You also have submitted an affidavit signed by a captain of the constable’s office who asserts that section 552.103 is applicable in this instance. Having considered your arguments and reviewed the affidavit, we find that you have not demonstrated that litigation was reasonably anticipated when the constable received this request for information. We therefore conclude that the constable may not withhold any of the remaining information under section 552.103 of the Government Code. *See also* Open Records Decision No. 361 at 2 (1983) (fact that request was made by attorney on behalf of rejected applicant not sufficient to invoke statutory predecessor to Gov’t Code § 552.103), 331 at 1-2 (1982) (mere chance of litigation not sufficient to trigger statutory predecessor).

You also raise section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130(a)(1)-(2). We have marked Texas driver’s license and motor vehicle information that the constable must withhold under section 552.130. The constable also must withhold the Texas license plate numbers contained in the submitted photographs under this exception. We note that the submitted documents also contain Texas driver’s license information pertaining to the requestor’s client. Because section 552.130 protects personal privacy interests, the requestor has a right of access to his client’s Texas driver’s license information, and that information may not be withheld in this instance under section 552.130. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

²Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission (“EEOC”), *see* Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

Lastly, we note that the submitted documents also contain social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.³ The constable must withhold the social security numbers that we have marked under section 552.147. Because this section also protects personal privacy, the constable may not withhold the social security number of the requestor’s client under section 552.147. Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987).

In summary: (1) the constable must release the accident report under section 550.065(c)(4) of the Transportation Code; (2) the constable must withhold the marked Texas driver’s license and motor vehicle information and the Texas license plate numbers contained in the photographs under section 552.130 of the Government Code; and (3) the marked social security numbers must be withheld under section 552.147. The rest of the submitted information must also be released.⁴

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

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

⁴Should the constable receive another request for these same records from a person who would not have a right of access to private information relating to the requestor’s client, the constable should resubmit these same records and request another ruling. *See* Gov’t Code §§ 552.301(a), .302.

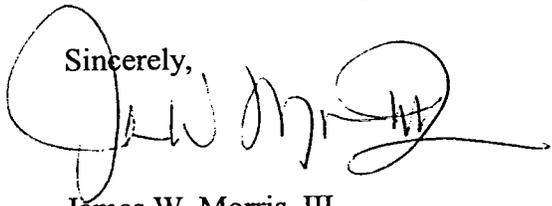
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,

A handwritten signature in black ink, appearing to read 'JW Morris III', written over a large, light-colored circular mark.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 239956

Enc: Submitted documents

c: Mr. Jim S. Adler
Jim S. Adler & Associates
1900 West Loop South, 20th Floor
Houston, Texas 77027-3214
(w/o enclosures)