



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2006

Ms. Barbara E. Roberts
Chamberlain, Hrdlicka, White, Williams & Martin, P.P.C.
1200 Smith Street, Suite 1400
Houston, Texas 77002

OR2006-09795

Dear Ms. Roberts:

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# 257584.

The Shenandoah Police Department (the "department"), which you represent, received a request for information pertaining to a specified traffic accident. 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that a portion of the information you seek to withhold has previously been released to the public. Information that a governmental body has previously released to the public may not be withheld by the governmental body unless it is able to demonstrate that the information is confidential by law. Gov't Code § 552.007. Although you assert that this information is protected under section 552.103 of the Government Code, this exception is discretionary and may be waived. As such, section 552.103 does not make information confidential for purposes of section 552.007. *See id.* (prohibiting selective disclosure of information that governmental body has voluntarily made available to any member of the public); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the

Act, but it may not disclose information made confidential by law). Accordingly, the information at issue may not be withheld pursuant to section 552.103. Therefore, this information must be released to the requestor.

Next, we note that included among the documents you seek to withhold is a CRB-3 accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code.¹ See Transp. Code § 550.064 (officer's accident report). 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. *Id.* § 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.* Here, the requestor has provided the department with two of the pieces of information. Thus, you must release the accident report in its entirety under section 550.065(b).

You claim that the remaining information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 provides in relevant 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 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. *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

¹The Texas Department of Public Safety informs us that the Texas Peace Officer's Accident Report, ST-3 form, has been replaced by the Texas Peace Officer's Crash Report, CRB-3 form.

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 contend that the remaining information relates to reasonably anticipated litigation regarding the traffic accident at issue. We note that the submitted information includes notices of claims. However, you have not represented that these notice of claim letters meet the requirements of the Texas Tort Claims Act. Therefore, we will only consider the claim letters as a factor in determining whether the department reasonably anticipated litigation over the incident in question. Based on your representations, our review of the submitted information, and the totality of the circumstances, we agree that litigation was reasonably anticipated on the date the request was received. Furthermore, we find that the remaining submitted information relates to the anticipated litigation for purposes of section 552.103(a). Thus, we find that you have demonstrated the applicability of section 552.103.

We note, however, that some of the information at issue reflects on its face that it was obtained from or provided to the opposing parties to the anticipated litigation. Once information has been obtained by all parties to the litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). Therefore, to the extent that the remaining information has either been obtained from or provided to all of the opposing parties in the anticipated litigation, it is not excepted from disclosure under section 552.103(a). However, to the extent that the remaining information has not been obtained from or provided to all of the opposing parties in the anticipated litigation, it may be withheld under section 552.103(a). Furthermore, the applicability of this exception under section 552.103 ends when the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We note that some of the remaining information is excepted from disclosure under section 552.117(a)(2) of the Government Code. This section excepts from disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members, regardless of whether the officer complies with section 552.024 or section 552.1175. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, the department must withhold the information we have marked pursuant to section 552.117(a)(2).

Finally, we note that some of the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides that a motor vehicle operator's, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Since section 552.130 protects individual privacy interests, the requestor has a special right of access under section 552.023 of the Government Code to his client's Texas motor vehicle record information. *See* Gov't Code § 552.023 (person or person's authorized representative has

special right of access to records that contain information related to that person that are protected from public disclosure by laws intended to protect that person's privacy interests). The department must withhold the Texas motor vehicle record information that we have marked under section 552.130.

In summary, the department must release the submitted CRB-3 accident report pursuant to section 550.065(b) of the Transportation Code. Other than information we have marked, the department may withhold the remaining information under section 552.103 of the Government Code. The department must withhold the information we have marked from the remaining documents under sections 552.117 and 552.130 of the Government Code. The remaining information must be released to the requestor.

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/dh

Ref: ID# 257584

Enc. Submitted documents

c: Mr. W. Jeff Paradowski
Law Offices of W. Jeff Paradowski, P.C.
P.O. Box 3335
Bryan, Texas 77805
(w/o enclosures)