



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 30, 2008

Ms. Julia Gannaway  
Lynn Pham & Ross, L.L.P.  
University Center II  
306 West Broadway Avenue  
Fort Worth, Texas 76104

OR2008-13367

Dear Ms. Gannaway:

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# 323200.

The City of Weatherford (the "city"), which you represent, received a request for several categories of information pertaining to a specified accident. You state that you have released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.110, and 552.130 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5.<sup>1</sup> You also state that releasing the submitted information may implicate the interests of Union Pacific Railroad Co. ("Union Pacific"). Accordingly, you state that you notified Union Pacific of the request and of its opportunity to submit comments to this office. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in

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<sup>1</sup>Although you initially raised section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn this exception. See Gov't Code §§ 552.301, .302. We also note that this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

Initially, we note, and you acknowledge, that the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.103 and 552.107 of the Government Code, Texas Rule of Civil Procedure 192.5 and Texas Rule of Evidence 503, these exceptions and rules are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See 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 section 552.103); Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under rule 192.5 is not compelling reason to withhold information under section 552.302), 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 663 at 5 (1999) (governmental body may waive sections 552.103 and 552.107); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). In failing to comply with section 552.301, the city has waived its claims under sections 552.103 and 552.107 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5, and may not withhold any of the submitted information based upon these exceptions and rules. However, because third party interests and sections 552.110 and 552.130 of the Government Code can provide compelling reasons for non-disclosure, we will address whether the submitted information is excepted from disclosure under the Act.

Next, we note that the submitted information includes a CR-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

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<sup>2</sup> We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation 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 this case, the requestor has provided the information specified by the statute. Although you contend that some information in the report is excepted from disclosure under section 552.130 of the Government Code, the exceptions found in the Act generally do not apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Accordingly, the CR-3 accident report form must be released in its entirety.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Union Pacific explaining why the requested information should not be released. On behalf of Union Pacific, however, you assert that a portion of the submitted information may be excepted under section 552.110(b) of the Government Code, which protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm).

After reviewing the city's arguments and the submitted information, we find that the city has not made the specific factual or evidentiary showing required by section 552.110(b) that the release of any of the information at issue would cause Union Pacific substantial competitive harm. Further, as stated previously, Union Pacific has not submitted to this office any reasons explaining why the information responsive to the request should not be released. We therefore conclude that the city may not withhold any portion of the requested information based on section 552.110 of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, 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). We note, however, that the purpose of section 552.130 is to protect the privacy interests of individuals. Since the right of privacy lapses at death, Texas driver's license and motor vehicle record information that pertains to deceased individuals may not be withheld under section 552.130.

*See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex.App.—Texarkana 1979, *writ ref'd n.r.e.*); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). The city must withhold the Texas motor vehicle record information we have marked in the submitted documents under section 552.130 of the Government Code. The city must also withhold the Texas motor vehicle record information from the submitted CDs under section 552.130; however, if the city is unable to redact this information from the submitted CDs, then they must be withheld in their entirety pursuant to section 552.130.

We note that some of the remaining information may be subject to sections 552.117 and 552.137 of the Government Code.<sup>3</sup> Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, pursuant to section 552.117(a)(1), if the employee at issue made a timely election to keep his information confidential, we have indicated the personal information in one of the submitted CDs that the city must withhold. However, if the city is unable to redact this information from the submitted CD, then the CD must be withheld in its entirety pursuant to section 552.117. If the employee at issue did not make a timely election, then the city may not withhold the personal information we have indicated on the CD under section 552.117(a)(1). We note that the submitted documents also contain information relating to the requestor's client that is deceased. Because the protection afforded by section 552.117 includes "current or former" officials or employees, the protection generally does not lapse at death and the city ordinarily would be required to withhold his client's personal information under section 552.117(a)(1) if the client timely elected confidentiality. However, section 552.117 protects personal privacy. Therefore, the requestor has a special right of access to private information concerning his client that would be excepted from public disclosure, and that information may not be withheld from this requestor under section 552.117. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).<sup>4</sup>

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup>Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a). Should the city receive another request for this particular information from a different requestor, then the city should again seek a decision from this office.

Section 552.137 provides that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov’t Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked an e-mail address in the submitted information that the city must withhold under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its public disclosure.

In summary, the city must release the submitted CR-3 accident report form in its entirety. The city must withhold the information we have marked in the submitted documents under section 552.130. In addition, we have indicated the types of information the city must withhold from the CDs under (1) section 552.117(a)(1) to the extent that the employee at issue timely elected confidentiality for the information under section 552.024, and (2) section 552.130; however, the city must withhold the CDs in their entirety if it is unable to redact the portions of the CDs that reveal this information. The city must withhold the marked e-mail address in accordance with section 552.137 unless the city receives consent for its release. The remaining submitted information must be released.<sup>5</sup>

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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

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<sup>5</sup>We note that the submitted information contains social security numbers. 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.

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 challenge 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,



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Open Records Division

PS/ma

Ref: ID# 323200

Enc. Submitted documents

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