



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 26, 2009

Ms. Cynthia S. Martinez  
Capital Metropolitan Transportation Authority  
2910 East Fifth Street  
Austin, Texas 78702

OR2009-00981

Dear Ms. Martinez:

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# 333052.

The Capital Metropolitan Transportation Authority ("Capital Metro") received a request for information relating to a specific bus accident. You state that some responsive information has been released to the requestor.<sup>1</sup> You claim that the submitted 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 first address Capital Metro's obligations under the Act. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You inform us that Capital Metro received this request on October 28, 2008. However, you did not request a

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<sup>1</sup>Although 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, in this instance the requestor has a right to his client's social security number, and that information may not be withheld from this requestor under section 552.147. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

ruling from our office until November 13, 2008. Consequently, we find that Capital Metro failed to comply with the procedural requirements of section 552.301.

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 is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.103 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *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); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with section 552.301, Capital Metro has waived its claim under section 552.103; therefore, Capital Metro may not withhold any of the submitted information under this exception. However, because section 552.130 of the Government Code can provide a compelling reason to overcome the presumption, we will address the applicability of this exception to the submitted information.<sup>2</sup>

We note that the submitted documents contain a peace officer's accident report form that has 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. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has provided Capital Metro with the specified items of information. Therefore, Capital Metro must release the accident report form under section 550.065(c)(4) of the Transportation Code. We note that the exceptions found in the Act generally do not apply to information made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Thus, Capital Metro must release the accident report form in its entirety to the requestor.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.” Gov’t Code § 552.130. We note that because this exception protects personal privacy, the requestor has a right of access to his client’s Texas motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).<sup>3</sup> However, Capital Metro must withhold the marked Texas motor vehicle record information that does not belong to the requestor’s client pursuant to section 552.130 of the Government Code. We note that if Capital Metro lacks the technical capability to redact the information subject to section 552.130 from the video recording at issue, Capital Metro must withhold the recording in its entirety. *See* Open Records Decision No. 364 (1983).

Finally, we note that some of the materials at issue appear to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the accident report form must be released in its entirety under section 550.065(c)(4) of the Transportation Code. Capital Metro must withhold the marked Texas motor vehicle record information that does not belong to the requestor’s client pursuant to section 552.130 of the Government Code; however, if Capital Metro lacks the technical capability to redact the information subject to section 552.130 from the video recording at issue, Capital Metro must withhold the recording in its entirety. The remaining submitted information must be released to the requestor, but any copyrighted information may only be released in accordance with copyright law.<sup>4</sup>

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<sup>3</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).

<sup>4</sup>We note that some of the information being released is confidential and not subject to release to the general public. Because such information may be confidential with respect to the general public, if Capital Metro receives another request for this information from an individual other than this requestor, Capital Metro should again seek our decision.

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 more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jb

Ref: ID# 333052

Enc. Submitted documents

c: Requestor  
(w/o enclosures)