



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2009

Mr. Brad Bowman  
General Counsel  
Texas Department of Licensing and Regulation  
P.O. Box 12157  
Austin, Texas 78711

OR2009-05548

Dear Mr. Bowman:

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# 340932 (TDLR # 5438).

The Texas Department of Licensing and Regulation (the "department") received a request for complaints filed against a named company or its agents or employees, as well as investigative reports related to any of these complaints. You state that you are releasing portions of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes a CRB-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including chapter 550 of the Transportation Code. Section 550.065(b) 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, the Texas Department of

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.* The requestor has not provided the department with two of the three pieces of information required under section 550.065(c)(4). Therefore, the submitted accident report, which you have marked, must be withheld under section 552.101 of the Government Code in conjunction with section 550.065(c)(4) of the Transportation Code.

Next, section 552.103 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 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) that the information at issue is related to that 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.); *see also* Open Records Decision No. 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *Id.*

To establish that litigation is reasonably anticipated for purposes of section 552.103, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *See* Open Records Decision No. 452 at 4 (1986). In the context of anticipated litigation in which the governmental body is the prospective prosecutor or plaintiff, the concrete evidence must at least reflect that litigation is "realistically contemplated." *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (investigatory file may be withheld if governmental body attorney determines that it should be withheld pursuant to

section 552.103 and that litigation is “reasonably likely to result”). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). This office considers a contested case under the Texas Administrative Procedure Act (the “APA”), Government Code chapter 2001, to constitute “litigation” for purposes of section 552.103. *See* Open Records Decision Nos. 588 (1991), 301 (1982).

You state that the submitted information pertains to investigations of alleged violations of chapter 2308 of the Occupations Code and chapter 86 of the Texas Administrative Code and “may result in the imposition of administrative penalties and/or license sanctions[.]” You further state that “once [your] investigation is completed, the [department] expects to set these matters for an administrative hearing as a contested case before the State Office of Administrative Hearings.” You inform us that the submitted information “would be submitted as evidence in an administrative hearing.” Based on these representations, we conclude that the department anticipated litigation when it received the present request for information. Our review of the submitted information also shows that the information is related to the anticipated litigation for purposes of section 552.103.

We note, however, that the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. *See* ORD 551 at 4-5. If the opposing party has obtained or otherwise been given access to the information then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Most of the submitted information was provided to or obtained from the potential opposing party. Therefore, with the exception of the information provided to or obtained from the potential opposing party, the department may withhold the submitted information under section 552.103 of the Government Code. We have marked the information that may be withheld under section 552.103.<sup>1</sup>

Next, section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver’s license and registration information. Gov’t Code § 552.130. Accordingly, the department must withhold the Texas driver’s license and registration information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.

In summary, (1) the department must withhold the submitted accident reports you have marked under section 552.101 of the Government Code in conjunction with section 550.065(c)(4) of the Transportation Code; (2) the department may withhold the information we have marked under section 552.103 of the Government Code; and (3) the department must withhold the information you have marked, in addition to the information

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<sup>1</sup>As our ruling is dispositive of this information, we need not address your remaining argument against its disclosure.

we have marked, under section 552.130 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information 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,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 340932

Enc. Submitted documents

c: Requestor  
(w/o enclosures)