



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2009

Mr. William G. Walston, Jr.
William G. Walston, Jr., P.C.
P.O. Box 1154
Rockport, Texas 78381-1154

OR2009-07747

Dear Mr. Walston:

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# 345256.

The City of Rockport (the "city"), which you represent, received a request for information relating to the requestor and to a list of what you indicate is information regarding the requestor's motor vehicles. 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 information you submitted.

You additionally contend that "the request is vague" and "does not provide a definitive period of time." Nevertheless, you have submitted information that you believe is responsive to the request. We note that a governmental body must make a good-faith effort to relate a request to information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Thus, because you have assembled and submitted what you believe is responsive information, we will determine whether it is excepted from disclosure.

We note that some of the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1).

Thus, the completed police reports that we have marked are subject to disclosure under section 552.022(a)(1). You do not claim an exception to disclosure under section 552.108. Although you do claim that the marked police reports are excepted under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 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 No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(1). Therefore, the city may not withhold any of the information in the marked police reports under section 552.103.

We next note that section 552.130 of the Government Code is applicable to some of the information in the marked reports.¹ This section, which is a confidentiality provision for the purposes of section 552.022(a)(1), excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). We have marked Texas driver's license information that the city must withhold under section 552.130. Although the marked reports also contain the requestor's Texas driver's license information, we note that section 552.130 protects personal privacy. Therefore, because the requestor has a right of access to his own private information under section 552.023 of the Government Code, the city may not withhold the requestor's Texas driver's license information under section 552.130.² *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).³

Next, we address your claim for the remaining information at issue under section 552.103. This exception provides in part:

¹Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

²Section 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).

³We note that the marked police reports also contain 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. The requestor has a right, however, to his own social security number. *See generally* Gov't Code § 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).

(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 claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. 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).

You state, and have provided pleadings demonstrating, that the city was a party to pending litigation with the requestor on the date of the city's receipt of this request for information. You contend that the rest of the submitted information is related to the issues in the pending litigation. Based on your representations and our review of the pleadings in the litigation and the information at issue, we conclude that section 552.103 is applicable to some of the remaining information.

We note, however, that the remaining information includes traffic complaints issued to the requestor. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, there is no interest in withholding information from public disclosure under section 552.103 if the opposing party in the litigation has seen or had access to the information, through discovery or otherwise. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, the traffic complaints that we have marked may not be withheld under section 552.103 and must be released. To the extent that the requestor has not already seen or had access to the rest of the information at issue, that information may be withheld at this time under section 552.103. We note that the

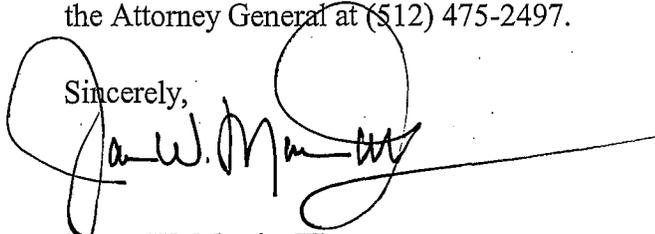
applicability of this exception ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary: (1) except for the marked Texas driver's license information, which must be withheld under section 552.130 of the Government Code, the marked police reports must be released pursuant to section 552.022(a)(1) of the Government Code; and (2) except for the marked traffic complaints, which must be released, the rest of the responsive information may be withheld under section 552.103 of the Government Code, to the extent that the requestor has not already seen or had access to the remaining information.⁴

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, 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,



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

JWM/cc

Ref: ID# 345256

Enc: Submitted documents

c: Requestor
(w/o enclosures)

⁴We note that some of the information that must be released would ordinarily be excepted from disclosure to protect this requestor's privacy. Should the city receive another request for these same records from a person who would not have a right of access to this requestor's private information, the city should resubmit these records and request another ruling. *See* Gov't Code §§ 552.301(a), .302.