



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2009

Ms. Claire Yancey
Assistant District Attorney
Denton County
P.O. Box 2850
Denton, Texas 76202

OR2009-09856

Dear Ms. Yancey:

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# 349332.

Denton County (the "county") received a request for information "regarding any fleet vehicle . . . driven, on or off duty, by any member of the Denton County Sheriff Mental Health Unit for the years 2000 through 2008." 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.

Initially, we note that some of the submitted information is made expressly public under section 552.022 of the Government Code, which provides in relevant part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(1), (3), (5). Portions of the submitted information are subject to sections 552.022(a)(1), 552.022(a)(3), and 552.022(a)(5) of the Government Code. The county may only withhold the information subject to section 552.022(a)(1) if it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under other law.¹ *See id.* The county may only withhold the information subject to sections 552.022(a)(3) and 552.022(a)(5) if it is confidential under other law. Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure that protects the 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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. We have marked a representative sample of the types of information that are subject to section 552.022(a) and that the county may not withhold under section 552.103. However, we will consider the applicability of sections 552.101, 552.130, and 552.136 of the Government Code to the information subject to section 552.022.² In addition, we will address your arguments under section 552.103 for the remaining information that is not subject to section 552.022.

We next address your claim under section 552.103 of the Government Code for the submitted information that is not subject to section 552.022. Section 552.103 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the

¹We note that the county does not raise section 552.108 for this information.

²The Office of the Attorney General will raise mandatory exceptions like sections 552.101, 552.130, and 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 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 state, and provide documentation showing, that prior to the county's receipt of this request, a lawsuit in which the county is a party styled *Bragg v. Parkey*, Cause No. 2009-40094-362, was filed and is currently pending in the District Court of Denton County, Texas, 362nd Judicial District. Accordingly, we find that litigation was pending when the county received this request for information. Furthermore, you explain the lawsuit relates to the information at issue because it pertains to claims in the lawsuit. Based on these representations and our review, we agree the information at issue relates to the pending litigation. Therefore, section 552.103 is generally applicable to the remaining information.

We note, however, 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). Further, the applicability of section 552.103(a) ends once the litigation has concluded. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982). Thus, except for the information obtained from or provided to the opposing party to the litigation, the county may withhold the remaining information that is not subject to section 552.022 under section 552.103.

Next, we note the information subject to section 552.022 includes accident report forms completed pursuant to chapter 550 of the Transportation Code.³ See Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states 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 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 instance, the requestor has not provided the county with two of the three pieces of information. Accordingly, the county must withhold the accident reports pursuant to section 550.065 of the Transportation Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a Texas motor vehicle driver's license or a Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). The county must withhold the Texas motor vehicle record information we have marked in the information subject to section 552.022 under section 552.130 of the Government Code.

The remaining records contain information excepted from disclosure under section 552.136 of the Government Code. Section 552.136 states "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). This office has concluded that insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the county must withhold the insurance policy, bank account, and routing numbers in the information subject to section 552.022, which we have marked, under section 552.136 of the Government Code.

In summary, except for the information obtained from or provided to the opposing party to the litigation, the county may withhold the submitted information that is not subject to section 552.022 of the Government Code under section 552.103 of the Government Code. In the information subject to section 552.022 of the Government Code, the county must withhold the accident reports pursuant to section 550.065 of the Transportation Code, and the information we have marked under sections 552.130 and 552.136 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.

³Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/cc

Ref: ID# 349332

Enc. Submitted documents

c: Requestor
(w/o enclosures)