



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2010

Mr. Jason Day
City Attorney
Royse City
P.O. Box 638
Royse City, Texas 75189

OR2010-06672

Dear Mr. Day:

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# 378747 (RCCA 10-0047).

The Royse City Police Department (the "department") received a request for eight categories of information pertaining to the towing of the requestors' commercial vehicle from a specified address on February 8, 2010. You claim 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 the requestors seek, among other things, the date and time the wrecker service was told to tow their vehicle and the name of the individual who told the wrecker service to do so. The submitted information does not contain these details. We assume to the extent records revealing this information existed when the department received the request for information, you have released it to the requestors. If not, then you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted call sheet reports are completed reports, which are subject to section 552.022(a)(1) of the Government Code. Pursuant to section 552.022(a)(1) of the Government Code, "a completed report, audit, evaluation, or investigation made of, for, or

by a governmental body” is expressly public unless excepted under section 552.108 of the Government Code or expressly confidential under “other law.” Gov’t Code § 552.022(a)(1). 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. Therefore, the department may not withhold the submitted call sheet reports under section 552.103. As you raise no further exceptions against disclosure, the submitted call sheet reports be released. However, we will address your claim under section 552.103 for the submitted information that is not subject to section 552.022.

Section 552.103 of the Government Code provides in 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 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). The department 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 is 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). The department must meet both prongs of this test for information to be excepted under 552.103(a). The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. *See* Open Records Decision Nos. 555 (1990); 518 at 5 (1989) (litigation must be "realistically contemplated"). This office has also found litigation was reasonably anticipated where the opposing party threatened to sue on several occasions and hired an attorney. *See* Open Records Decision No. 288 (1981). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982).

You state that prior to the department's receipt of the request the requestors complained that the towing at issue was unlawful, and made known their desire to "be made whole" for this alleged unlawful act. You claim that, based on these statements, the department reasonably anticipated litigation with the requestors. Although you also provide documentation reflecting one of the requestors filed a lawsuit against the department pertaining to the towing at issue, you acknowledge this lawsuit was not filed until after the department received the instant request for information. *See* Gov't Code § 552.103(c). Upon review of your arguments, we find you have failed to provide any concrete evidence that, prior to the receipt of the request, the requestors actually took any objective steps toward filing suit against the department. Accordingly, you have not demonstrated the department reasonably anticipated litigation on the date of its receipt of the request, and the department may not withhold the remaining information at issue under section 552.103. As you raise no other exceptions to disclosure, the submitted information must be released in its entirety.¹

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

¹We note that the information being released contains Texas motor vehicle record information that ordinarily would be subject to section 552.130 of the Government Code. However, the requestors have a special right of access to their own Texas motor vehicle information. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from an individual other than either requestor in this instance, the department must again seek a ruling from this office.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Davis", with a long horizontal flourish extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 378747

Enc. Submitted documents

cc: Requestor
(w/o enclosures)