



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2011

Ms. Bertha Bailey Whatley
Chief Legal Counsel and Public Information Designee
Fort Worth Independent School District
100 North University Drive
Fort Worth, Texas 76107

OR2011-00352

Dear Ms. Whatley:

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# 405200.

You inform us the Fort Worth Independent School District (the "district") received a request for information pertaining to a specified accident.¹ You claim the requested information is excepted from disclosure under section 552.103 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e)(1)(C), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the written request for

¹As you have failed to submit a copy of the request for information, we take our description from your brief.

²Although you initially indicated the requested information was also subject to FERPA and excepted under sections 552.101 and 552.107 of the Government Code, you do not provide arguments explaining their applicability to the information at issue; therefore, we assume the district is no longer asserting FERPA or section 552.101 or 552.107. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain applicability of raised exception).

information. Gov't Code § 552.301(e)(1)(C). You inform us the district received the request for information on October 21, 2010; however, as of the date of this ruling, you have not submitted a copy of the written request for information. Thus, the district has failed to comply with the procedural requirements mandated by 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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). 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 discretionary in nature; it serves only to protect a governmental body's interests. *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. 522 (1989) (discretionary exceptions in general). Thus, the district's claim under section 552.103 is not a compelling reason to overcome the presumption of openness, and the district may not withhold any of the submitted information on that ground. Sections 552.102, 552.117, and 552.130 of the Government Code, however, are compelling reasons to overcome the presumption of openness.³ Accordingly, we will address the applicability of these sections to the submitted information.

The submitted information contains a CR-3 accident report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *See id.* § 550.065(b). 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.⁴ *Id.* According to your description of the request for information, the requestor has provided the district with two of the three pieces of information pursuant to section 550.065(c)(4). Thus, the district must release the submitted CR-3 accident report we have marked under this section.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body.

⁴Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

Section 552.102(a) of the Government Code. excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Such information may not be withheld for individuals who did not make a timely election. We have marked information that must be withheld if section 552.117 applies.⁵

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). 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(b) (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, the district must withhold the Texas motor vehicle record information to which the requestor does not have a right of access, which we have marked, under section 552.130.⁶

⁵The information subject to section 552.117(a)(1) includes a social security number. We note a governmental body may redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov’t Code § 552.147(b).

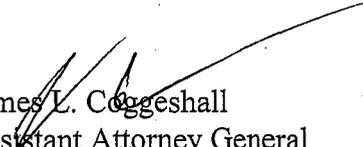
⁶We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number, a Texas license plate number, and the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

To conclude, the district must release the marked CR-3 accident report pursuant to section 550.065(c)(4) of the Transportation Code. The district must withhold the following: the information marked under section 552.102(a) of the Government Code; the information marked under section 552.117(a)(1) of the Government Code if the employee at issue timely elected to withhold that information; and the information marked under section 552.130 of the Government Code. The district must release the remaining information.⁷

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, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tf

Ref: ID# 405200

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁷Because the requestor has a right of access to the information being released, the district must again seek a decision from this office if it receives another request for the same information from another requestor.