



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2013

Ms. Rachel L. Lindsay
Counsel for the Town of Flower Mound
Brown & Hofmeister, LLP
740 East Campbell, Suite 800
Richardson, Texas 75081

OR2013-11845

Dear Ms. Lindsay:

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# 492860.

The Flower Mound Police Department (the "department"), which you represent, received a request for information regarding a specified incident. 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 submitted information includes a CR-3 report completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). However, section 550.065(c)(4) provides for 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.¹ In this instance, the requestor has provided the department with the required information pursuant to section 550.065(c)(4). Although you seek to withhold this information under section 552.103 of the Government

¹See Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

Code, we note a statutory right of access generally prevails over the exceptions to public disclosure under the Act. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Accordingly, the submitted CR-3 report must be released in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

Section 552.103 of the Government Code provides, in relevant 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). The governmental body claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (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 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.). 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 provide documentation showing, the submitted information relates to litigation styled *Smith v. McKenna*, Case No. 2012-60447-393, which is pending in the 393rd Judicial District Court in Denton, Texas. However, we note the department is not a named party to the pending litigation; rather, the pending litigation is between private parties. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating that predecessor to section 552.103 only applies when governmental body is party to litigation). Accordingly, you have failed to demonstrate the applicability of section 552.103 to the remaining information, and the department may not withhold the remaining information on that basis.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country.² Gov't Code § 552.130(a)(1)-(2). Therefore, the department must withhold the information we have marked and indicated under section 552.130 of the Government Code.³ The remaining information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 492860

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).