



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2014

Ms. E. Joyce Iyamu
First Assistant City Attorney
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2014-13668

Dear Ms. Iyamu:

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# 531807.

The Missouri City Police Department (the "department") received a request for information pertaining to peace officers who were terminated during a specified period of time.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor specifically excludes from her request birth dates, social security numbers, attorney-client information, "pending litigation information except those [records otherwise responsive] to the request, names and identifying information of juvenile defendants, non-city e-mail addresses, [and] information relating to [officers'] home addresses, phone numbers, and family information." Accordingly, those types of information are not responsive to the present request for information. This ruling does not address the

¹You inform us the department sought and received clarification of the information requested. See Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W. 3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

public availability of any information that is not responsive to the request, and the department need not release such information in response to this request.²

We next note some of the responsive information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or 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 [of the Government Code.]

Gov't Code § 552.022(a)(1). The information pertaining to case number 96.30302 consists of a completed internal affairs investigation that is subject to section 552.022(a)(1) and must be released unless the information is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *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); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold the responsive information subject to section 552.022 under section 552.103 and it must be released. However, we will consider your arguments under section 552.103 for the remaining information that is not subject to section 552.022.

We note the remaining information contains CR-3 accident report forms. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information made confidential by statute. Gov't Code § 552.101. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. 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). The requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the submitted CR-3 accident reports under

²Accordingly, we need not address your arguments under sections 552.117 and 552.137 of the Government Code.

section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code.

Section 552.103 of the Government Code provides in 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). 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, orig. proceeding); *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 assert the remaining responsive information relates to pending litigation. You inform us, and provide documentation demonstrating, prior to the department's receipt of the instant request for information, a notice of appeal was filed and certain claims were pending remand in a lawsuit styled *Peter Paske v. City of Missouri City, et. al*, Case No. 12-DCV-200899. Thus, we find litigation was pending against the department at the time it received the request. Moreover, we find the information at issue is related to the pending litigation. Accordingly, the department may withhold the remaining responsive information under section 552.103 of the Government Code.³

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of portions of this information.