



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2014

Ms. Stacie S. White
Counsel for the Town of Flower Mound
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2014-13822

Dear Ms. White:

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# 532156.

The Flower Mound Police Department (the "department"), which you represent, received a request for ten categories of information relating to traffic accidents reported during a specified time period. You state the department will withhold information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and information pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted CR-3 Texas Peace Officer's Crash Reports and a call report. We assume, to the extent any information responsive to the remainder of the

¹We note section 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* 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 id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision.

request existed on the date the department received the request, the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code 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, such as 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. 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. The submitted information contains CR-3 Texas Peace Officer's Crash Reports. In this instance, the requestor has not provided the department with two of the three pieces of required information pursuant to section 550.065(c)(4) for any of the CR-3 accident reports at issue. Accordingly, the department must withhold the submitted CR-3 accident reports under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code from this requestor.²

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.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) applies 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 requested information is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *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). *See* ORD 551 at 4.

You contend the remaining information is related to active litigation to which the Town of Flower Mound is a party. You inform us, and have provided documentation demonstrating, litigation styled *Novak v. Town of Flower Mound*, Case No. 2013-50030-367, is pending in the District Court of Denton County, 367th Judicial District. You state the remaining information is related to the active lawsuit. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was active when the department received this request for information and the remaining information is related to the active litigation for the purposes of section 552.103. Therefore, the department may withhold the remaining information under section 552.103 of the Government Code.

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing party has seen or had access to information relating to the active litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the department must withhold the submitted CR-3 accident reports under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code from this requestor. The department may withhold the remaining information under section 552.103 of the Government Code.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 532156

Enc. Submitted documents

c: Requestor
(w/o enclosures)