



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2014

Ms. Janet L. Kellogg
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2014-15464

Dear Ms. Kellogg:

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# 533018 (City File No. 494).

The City of Corpus Christi (the "city") received a request for all information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted the home address, home telephone number, and cellular telephone number of an individual. Section 552.024(c) of the Government Code authorizes a governmental body to redact information protected by section 552.117 of the Government Code without the necessity of requesting a decision from this office. *See* Gov't Code § 552.024(c). Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). Information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Upon review, we find you have not

established the individual at issue is an employee of the city. Accordingly, the city may not withhold the information you redacted under section 552.024(c).

Additionally, you have redacted the year, make, and model of a vehicle, vehicle identification, license plate, and driver's license numbers, and the license plate and driver's license issuance states under section 552.130(c) of the Government Code.¹ 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, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a). We note the year, make, and model of a vehicle is not motor vehicle record information for section 552.130 purposes. Thus, this information may not be withheld under section 552.130. Additionally, you redacted the requestor's client's motor vehicle record information. Because section 552.130 protects personal privacy, the requestor has a right of access to his client's own motor vehicle record information under section 552.023 of the Government Code, and this information may not be withheld from him under section 552.130. *See id.* § 552.023(a) ("A person . . . has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, the remaining motor vehicle record information you redacted must be withheld under section 552.130 of the Government Code.

We note you also redacted an insurance policy number under section 552.136(c) of the Government Code.² Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). We note, however, you redacted the requestor's client's insurance policy number. Because section 552.136 also protects personal privacy, the requestor has a right of access to his client's own insurance policy number under section 552.023 of the Government Code, and this information may not be withheld from him under section 552.136. *See id.* § 552.023(a); *see also* ORD 481 at 4.

¹Section 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).

²Section 552.136(c) of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

Accordingly, the city may not withhold the insurance policy number you redacted under section 552.136.

We note you have also redacted a date of birth from the submitted documents. You do not assert, nor does our review of our records indicate, the city has been authorized to withhold any such information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Because we can discern the nature of the information that has been redacted, being deprived of it does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), .302.

Next, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). We noted the submitted information reveals there was a previous request for information received by the city on March 12, 2014, for copies of all photographs of the scene of the accident, the city's insured's vehicle, or the requestor's client's vehicle, the city's insured's declaration page, and all correspondence and documentation related to the motor vehicle accident at issue. Pursuant to section 552.303 of the Government Code, this office requested you explain the capacity in which the city responded to this previous request for information. *See id.* § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render decision). In your response to this office, you state the city notified the requestor the individual involved in the accident at issue was not a city employee and, therefore, not the city's insured. However, we note the previous request for information also sought from the city any and all records related to the motor vehicle accident at issue. Further, portions of the submitted information are responsive to this previous request. You have not sought a ruling from this office for this portion of the previous request. Thus, we find the city failed to comply with section 552.301 with respect to the submitted information that is responsive to the previous request for information.

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 the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. You claim section 552.103 of the Government Code for the information at issue. Section 552.103 is discretionary in nature 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 Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the city has waived its claim under section 552.103 for the portions of the submitted information that are responsive to the previous request for information. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). We note in waiving its claim under section 552.103 for the information responsive to the first request, the city also waived this claim for this same information with respect to the present request. *See* Gov't Code § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). However, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability for the portions of information responsive to the previous request. Additionally, we will address your argument under section 552.103 for the information only responsive to the present request.

Next, we note the submitted information contains a CR-3 accident report form 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). 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, a 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. *Id.* In this instance, the requestor has provided the city with the requisite pieces of information specified by the statute. Accordingly, the city must release the submitted CR-3 accident report form we have marked in its entirety to this requestor pursuant to section 550.065(c)(4) of the Transportation Code.

We next address your argument under section 552.101 for the photographs at issue. 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 exception encompasses information made confidential by other statutes, including section 143.090 of the Local Government Code, which provides as follows:

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You state the city is a civil service city under chapter 143 of the Local Government Code. You state the submitted photographs depict police officers employed by the city's police department. You also state none of the other exceptions under section 143.090 apply. Based on your representations and our review, we conclude the city must withhold the photographs you marked under section 552.101 of the Government Code in conjunction with section 143.090 of the Local 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 that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received 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, 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.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990).*

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 establish litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Open Records Decision No. 452 at 4 (1986).* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* In *Open Records Decision No. 638 (1996)*, this office stated a governmental body has met its burden of showing litigation is reasonably anticipated by representing it received a notice-of-claim letter that is in compliance with the Texas Tort Claims Act (“TTCA”), chapter 101 of the Civil Practices and Remedies Code. If that representation is not made, the receipt of the claim letter is a factor we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established litigation is reasonably anticipated. *See ORD 638 at 4.*

The city states, and provides documentation showing, it received a notice of claim letter prior to receipt of the present request for information. You state the notice of claim letter is in compliance with the TTCA. Based on the representations of the city and our review of the submitted documents, we find the city has demonstrated it reasonably anticipated litigation when it received the request for information. You further state, and we agree, the information at issue is related to the anticipated litigation. Accordingly, section 552.103(a) of the Government Code is applicable to the remaining information not responsive to the previous request.

We note, however, the opposing party has seen or had access to portions of the information at issue. The purpose of section 552.103 of the Government Code is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. *See ORD 551 at 4-5.* Thus, once the opposing party in anticipated litigation has seen or had access to information that is related to the litigation, there is no interest in withholding such information from public disclosure under section 552.103. *See Open Records Decision Nos. 349 (1982), 320 (1982).* Accordingly, the city may withhold under section 552.103 only the information we marked that the opposing party to the litigation has not seen or to

which the opposing party has not had access. We 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 city must release the submitted CR-3 accident report form we have marked in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. The city must withhold the photographs you marked under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. The city may withhold under section 552.103 the information we marked that the opposing party to the litigation has not seen or to which the opposing party has not had access. 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 533018

Enc. Submitted documents

c: Requestor
(w/o enclosures)