



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2014

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

OR2014-18204

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# 539995 (City File Number 788).

The City of Corpus Christi (the "city") received a request for all evidence, including videos, statements, and witness names and contact information, pertaining to a specified incident involving the requestor's client. 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 some of the submitted information, which we have marked, is not responsive to the request for information because it was created after the date the city received the request. This ruling does not address the public availability of any information that is not responsive to the instant request, and the city need not release any such information in response to this request.

Next, we note the submitted responsive information includes a completed report subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(1). The report at issue, which we have marked, is subject to section 552.022(a)(1) and must be

released unless it 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 city may not withhold the report subject to section 552.022(a)(1) under section 552.103. However, we note the report contains information that is subject to sections 552.102, 552.117, and 552.130 of the Government Code, which make information confidential under the Act.¹ Thus, we will address the applicability of these exceptions to this information. We will also address your argument under section 552.103 for the remaining information that is not subject to section 552.022(a)(1).

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 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.*, 354 S.W.3d 336 (Tex. 2010). The city must withhold the information we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Section 552.117 is applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of 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, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024, the city must

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold the information we have marked under section 552.117(a)(1) of the Government Code, including the personal cellular telephone number if the cellular telephone service is not paid for by a governmental body. The city may not withhold this information under section 552.117(a)(1) if the individual whose information is at issue did not make a timely election to keep the information confidential. Further, the city may not withhold the marked cellular telephone number if the cellular telephone service is paid for by a governmental body.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the city must withhold the information we have marked under section 552.130 of the Government Code.

We will now address the public availability of the remaining information that is not subject to section 552.022(a)(1). Section 552.103 of the Government Code provides, in relevant part, as follows:

(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 purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). 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.); ORD 551 at 4.

The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

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 when it has received a notice of claim letter and the governmental body represents the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act ("TTCA"), Civil Practice and Remedies Code, chapter 101, or an applicable municipal ordinance.

You assert the city reasonably anticipates litigation involving the requestor's client because, on the same day the city received the request for information, the requestor submitted a notice of claim letter on behalf of his client alleging the city's liability for injuries and damages sustained by the requestor's client during the incident specified in the request. You state the claim letter meets the requirements of the TTCA. Based on your representations and our review, we conclude the city reasonably anticipated litigation when it received the request for information. You state the information at issue relates to the litigation because it pertains to the basis of the anticipated litigation. Accordingly, the city may withhold the responsive information that is not subject to section 552.022(a)(1) of the Government Code under section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

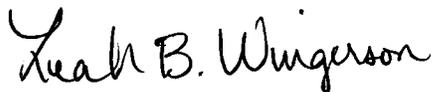
In summary, the city must withhold (1) the dates of birth we have marked under section 552.102 of the Government Code; (2) the information we have marked under section 552.117(a)(1) of the Government Code, including the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body, to the extent the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code; and (3) the motor vehicle record information we have marked under section 552.130 of the Government Code. The city may withhold the responsive information that is not subject to section 552.022(a)(1) of the Government Code

under section 552.103 of the Government Code. The city must release the remaining information.²

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/eb

Ref: ID# 539995

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access beyond that of the general public to some of the information being released that pertains to his client. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).