



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 4, 2016

Ms. Ylise Janssen  
General Counsel  
Office of the General Counsel  
Austin Independent School District  
1111 West Sixth Street  
Austin, Texas 78703

OR2016-07482

Dear Ms. Janssen:

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# 604296.

The Austin Independent School District (the "district") received a request for records related to a specified motor vehicle accident, including incident and investigative reports, photographs, and personnel information of the district employee involved in the specified accident. 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 some of the submitted information is not responsive to the request for information because it was created after the district received the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release this information in response to this request.

Next, we note a portion of the responsive information is subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to

or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. Transp. Code §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). Transp. Code § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the requestor is a person listed under section 550.065(c). Although the district asserts section 552.103 to withhold the information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *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). Because section 552.103 is a general exception under the Act, the requestor's statutory access under section 550.065(c) prevails and the district may not withhold the information at issue under section 552.103 of the Government Code. Consequently, the district must release the submitted accident report we have marked to this requestor pursuant to section 550.065(c) of the Transportation Code.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant 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; [and]

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(1), (3). The submitted information includes completed evaluations and an invoice related to the receipt or expenditure of funds by the district which are subject to section 552.022. The district must release the completed evaluations pursuant to section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the

Government Code or are made confidential under the Act or other law.<sup>1</sup> *See id.* § 552.022(a)(1). The district must release the invoice pursuant to section 552.022(a)(3) unless the information is made confidential under the Act or other law. You seek to withhold the information subject to section 552.022 under section 552.103 of the Government Code. However, 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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the information subject to section 552.022 may not be withheld under section 552.103 of the Government Code. However, because section 552.130 of the Government Code makes information confidential under the Act, we will consider its applicability to the information subject to section 552.022(a)(3).<sup>2</sup> We will also consider your arguments against disclosure of the information not subject to section 552.022 of the Government Code.

Next, we consider the applicability of section 552.103 of the Government Code to the information not subject to section 552.022 of the Government Code. 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 governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or

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<sup>1</sup>We note the district does not raise section 552.108 for the information subject to section 552.022(a)(1).

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

reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue is related to that litigation. *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). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

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.” *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 district states, and the submitted documentation reflects, the district received a notice-of-claim letter concurrent with its receipt of the instant request for information. However, the district does not affirmatively represent to this office the claim letter is in compliance with the TTCA. Therefore, we will only consider the claim as a factor in determining whether the district reasonably anticipated litigation when it received the request for information. Based on the representations of the district, our review of the submitted documents, and the totality of circumstances, we find the district has demonstrated the district reasonably anticipated litigation when it received the request for information. We also find the district has established the remaining responsive information is related to the anticipated litigation for purposes of section 552.103(a). Therefore, the district may withhold the responsive information not subject to section 552.022 under section 552.103(a) of the Government Code.<sup>3</sup>

However, once the information has been obtained by all parties to the anticipated litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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<sup>3</sup>As our ruling is dispositive, we need not consider your remaining argument against disclosure.

Next, we consider the applicability of section 552.130 of the Government Code to the information subject to section 552.022(a)(3) of the Government Code. Section 552.130 of the Government Code exempts from disclosure 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 this state or another state or country. Gov't Code § 552.130(a). Accordingly, the district must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the district must release the submitted accident report we have marked to this requestor pursuant to section 550.065(c) of the Transportation Code. The district may withhold the responsive information not subject to section 552.022 under section 552.103(a) of the Government Code. The district must withhold the information we have marked under section 552.130 of the Government Code. The district must release the remaining responsive information subject to section 552.022 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](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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 604296

Enc. Submitted documents

c: Requestor  
(w/o enclosures)