



May 11, 2000

Ms. Pamela Smith
Assistant General Counsel
Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2000-1844

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 135923.

The Texas Department of Public Safety (the "department") received a request for information relating to an alleged DWI offense. The requestor seeks information relating to the arrest and to employment experience of the arresting officer. You argue the information is excepted from public disclosure pursuant to Government Code section 552.103. We have reviewed your claimed exception and the information submitted.

We note at the outset that the submitted information contains a four page offense report which is a completed report. Section 552.022(a) of the Government Code, in pertinent part, provides as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under 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.

The report constitutes a completed report made for a governmental body. Because section 552.022(a)(1) specifically makes this type of information public, and not subject to the discretionary exceptions to required public disclosure (other than section 552.108), and

because you did not invoke the protection of section 552.108, we conclude that the department must release the report.¹ For your reference, we have marked the relevant report.

We will now address whether section 552.103 excepts the remaining documents from disclosure. Section 552.103(a), the “litigation exception,” excepts from disclosure information relating to litigation to which the state is or may be a party. A governmental body has the burden of providing relevant facts and documents to show that 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 reasonably anticipated, and (2) the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (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 under section 552.103(a).

You inform us that the case to which the requested information relates is currently set for trial in Travis County. You have submitted a letter from the Travis County Attorney’s office which states that the case is set for trial, the requested information is related to the pending prosecution, and that the information should be withheld. We find that the submitted information, with the exception of the offense report addressed above, relates to pending litigation. Under these circumstances, we conclude that the department may withhold the information at issue from disclosure under section 552.103(a).

We note that 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 the opposing party in the litigation is not excepted from disclosure under section 552.103(a). Moreover, the applicability of section 552.103(a) ends once the litigation has been concluded. *See Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982)*.

This letter ruling is limited to the particular records at issue in this request and to the facts as presented to us. Therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

¹We note that the report contains the requestor’s social security and driver’s license numbers, as well as the registration and vehicle identification numbers of the vehicle driven by him on the date of the subject offense. Ordinarily, this type of information is excepted from public disclosure. An individual’s social security number is confidential if it was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. *See 42 U.S.C. § 405(c)(2)(C)(viii); Open Records Decision No. 622 (1994)*. Section 552.130 of the Government Code governs the release and use of motor vehicle record information. However, pursuant to section 552.023 of the Government Code, an individual who is the subject of information has a special right of access to the information even though it would otherwise be protected from public disclosure by laws intended to protect that person’s privacy interests. *See Gov’t Code § 552.023*. Thus, we conclude you must release the social security and driver’s license numbers, as well as the registration and vehicle identification numbers of the vehicle to this requestor. In summary, you must release the report to the requestor in its entirety.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/cwt

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Encl. Submitted Documents

cc: Mr. Brad Wilkinson
12813 Palfrey
Austin, Texas 78727
(w/o enclosures)