



August 15, 2000

Mr. Therold I. Farmer
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P. O. Box 2156
Austin, Texas 78768

OR2000-3115

Dear Mr. Farmer:

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# 138008.

The Edinburg Consolidated Independent School District (the "district"), which you represent, received a request for copies of all reports regarding the requestor. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.111 of the Government Code. You have submitted the responsive information for our review. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the submitted information is excepted from public disclosure under Government Code section 552.103. 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 district must meet both prongs of this test for the information to be excepted under section 552.103(a).

You explain that the requestor has served upon the district documents that purport to be a "civil action." You have submitted a copy of a complaint made against the district in which the requestor alleges slander. Based on your representations, and our review of the documents at issue, we find that you have sufficiently shown that litigation involving the district is reasonably anticipated. Moreover, we agree that some of the submitted information pertains to the anticipated litigation. Thus, you may withhold most of the submitted information under section 552.103.

We note, however, 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 and such information must be disclosed. *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 anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. In addition, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

The submitted information includes a Texas Department of Public Safety ("DPS") report which contains driver's license information of the requestor. This report does not relate to the anticipated litigation. Thus, we will consider your other claims. You assert that Government Code sections 411.083 and 411.085(a)(2), when read in harmony, prohibit the release of the DPS report by the district. Section 411.083 is applicable to the dissemination of criminal history record information ("CHRI"). Section 411.083 deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally* Gov't Code §§ 411.090 - 411.127. The information at issue here, however, is not CHRI, but rather is driver's license information. Therefore, section 411.083 is not applicable in this instance.

You also argue that the DPS report is excepted from public disclosure under Government Code section 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not explain how the release of the DPS report would interfere with law enforcement and the report does not supply the explanation on its face; as such, we conclude you have not demonstrated how section 552.108 applies to the information. Therefore, you may not withhold the DPS report pursuant to section 552.108.

Texas driver's license information is normally excepted from public disclosure under Government Code section 552.130. Section 552.130(a)(1) provides that information relating to "a motor vehicle operator's or driver's license or permit issued by an agency of this state" is excepted from public disclosure. Section 552.130 is intended to protect the privacy of the individual who is the subject of the 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. Therefore, the DPS report must be released to the requestor.

In summary, with the exception of the DPS report which must be released to the requestor, you may withhold the submitted information.¹

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.

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).

¹As Government Code section 552.103 is dispositive, we need not address your remaining claims.

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/pr

Ref: ID# 138008

Encl. Submitted documents

cc: Mr. Guadalupe Olivarez, Jr.
411 Palm Way Citrus Bay
Pharr, Texas 78577
(w/o enclosures)