



June 7, 2001

Mr. John Steiner  
Division Chief  
City of Austin - Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2001-2376

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148123.

The City of Austin (the "city") received a request for all information concerning pedestrian accidents in the parking area of the Austin-Bergstrom International Airport. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We have also considered the comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may make comments stating why information should or should not be released).

We note at the outset that the submitted incident reports are subject to section 552.022 of the Government Code. Section 552.022(a)(1) states that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it is excepted under section 552.108 of the Government Code or is confidential by law. You argue that the submitted incident reports are excepted from disclosure under section 552.103. Our office has previously concluded that section 552.103 is a discretionary exception that does not make information confidential. *See Open Records Decision Nos. 551 (1990)* (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation, and does not itself make information confidential). Accordingly, you may not withhold any of the completed reports under section 552.103 of the Government Code.

You also claim, however, that the incident reports contain information that is protected from disclosure under section 552.130 of the Government Code. Since section 552.130 is a mandatory exception to disclosure under the Public Information Act, we will address your claim under that exception. Section 552.130 of the Government Code excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state.

Section 552.130, by its terms, only applies to motor vehicle information issued by the State of Texas. The incident reports contain drivers' license information issued by the State of Texas, as well as information issued by other jurisdictions. Accordingly, you must only withhold from disclosure the Texas drivers' license information contained within the submitted incident reports. The remaining information in these reports must be released.

We will now consider whether the remaining documents may be withheld from disclosure under section 552.103. In order to establish a section 552.103 claim, the city must demonstrate that 1) litigation is pending or reasonably anticipated, and 2) the information at issue is related to that litigation. *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, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Section 552.103 requires concrete evidence that litigation may ensue. A governmental body may establish that litigation is reasonably anticipated by showing that it has received a claim letter from an allegedly injured party or his attorney and by stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or an applicable municipal ordinance or statute. Open Records Decision No. 638 (1996).

In this instance, you state that the city has received notices of claim from an injured party and her attorney. You also represent that these notices are in compliance with the notice requirements of the TTCA. We conclude that the city reasonably anticipates litigation of this matter. *See* Open Records Decision No. 638 (1996). We also conclude that the remaining submitted documents are related to the anticipated litigation for purposes of section 552.103(a) and may, therefore, be withheld.

However, we note that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest generally 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 anticipated litigation is not excepted from disclosure under section 552.103, and it must be disclosed. Moreover, the applicability of section 552.103 of the Government Code ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).<sup>1</sup>

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<sup>1</sup>We note that some of the submitted documents are confidential by law and may not be released even after the litigation has concluded.

In summary, you must withhold under section 552.130, the marked drivers' license information contained in the submitted incident reports. However, you must release the remainder of those reports to the requestor. You may withhold the remaining submitted documents under section 552.103 of the Government Code.

This letter ruling is limited to the particular records 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 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).

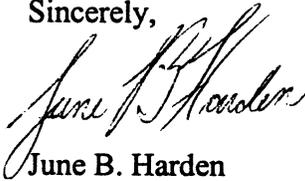
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RJB/seg

Ref: ID# 148123

Enc: Marked documents

c: Mr. Samuel Sanchez  
Smith & Carlson  
3508 Far West Boulevard, Suite 320  
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(w/o enclosures)