



December 20, 2001

Mr. Brett Bray
Division Director
Motor Vehicle Division
Texas Department of Transportation
P.O. Box 2293
Austin, Texas 78768

OR2001-6011

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156450.

The Texas Department of Transportation (the "department") received a request for a specified file on a named automobile dealer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. You advise that materials received from the requestors is being released to them. We have considered the exceptions you claim and reviewed the submitted information.

At the outset, we note that the submitted documents contain information that is made expressly public under section 552.022 unless it is confidential under other law. One category of expressly public information under section 552.022 is "final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases." Gov't Code § 552.022(a)(12). *See also id.* § 552.022(a)(17) (information that is also contained in a public court record). Therefore, the submitted final judgment must be released unless it is confidential under other law. Sections 552.103, 552.107, and 552.111 are discretionary exceptions and not "other law" that makes information "expressly confidential" for purposes of section 552.022. Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision

Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 522 at 4 (1989) (discretionary exceptions in general). While section 552.101 of the Government Code¹ constitutes other law for purposes of section 552.022, you claim an exception under this section in conjunction with section 51.251 of the Occupations Code only for social security numbers in the file. The final judgment contains no social security numbers. Therefore, you must release the copy of the final judgment.

We now address your claim under section 552.103 for the remaining requested information. Section 552.103 states in pertinent part:

a) Information is excepted from the requirements of Section 552.021 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 governmental body has the burden of providing relevant facts and documents to show the applicability of section 552.103 in a particular situation. The test for establishing that section 552.103(a) applies is a showing that (1) litigation is pending or reasonably anticipated on the date that the governmental body receives the request, 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991).

You inform this office that the requested file involves a complaint currently under investigation for possible litigation against the automobile dealer. You explain that the department has the authority to enforce chapter 503 of the Transportation Code, under which the present case was brought. You further inform us that the case has been assigned to an attorney who will make a determination as to whether to proceed with litigation. You state that the information was prepared in anticipation of litigation or after the department

¹ This section is now codified as section 56.001 of the Occupations Code. Act of May 22, 2001, 77th Leg., R.S., § 14.001(a).

commenced an action. Based on our review of your arguments and the submitted information, we conclude that litigation was reasonably anticipated on October 11, 2001, the date the department received the request for information, and that the submitted documents relate to the anticipated litigation for purposes of section 552.103(a). *Texas Legal Found.*, 958 S.W.2d at 483.

We note that if the opposing party in the anticipated litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor.² The submitted information includes many documents that have been seen by the opposing party, which you state will be provided to the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). Otherwise, you may withhold the submitted information other than the final judgment from disclosure under section 552.103. As section 552.103 is dispositive, we do not address your other claimed exceptions.

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).

² In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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 Texas Building and Procurement 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,

A handwritten signature in cursive script that reads "Kristeh Bates".

Kristeh Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 156450

Enc. Submitted documents

c: Mr. Thomas Daniel
1900 Pear Street
Austin, Texas 78705-5408
(w/o enclosures)