



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 16, 2003

Mr. Jeff Lopez  
Assistant General Counsel  
Texas Department of Public Safety  
5805 North Lamar Boulevard  
Austin, Texas 78773-0001

OR2003-0348

Dear Mr. Lopez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175085.

The Texas Department of Public Safety (the "department") received a request for information pertaining to a referenced automobile accident. You state that you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that some of the submitted information is made expressly public under section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) 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 "Texas Highway Patrol Major Accident Investigation" is a completed report, and expressly public under section 552.022(a)(1). Therefore, you may only withhold this information if it is confidential under other law. You do not argue that this information is excepted under section 552.108. Although you argue that the submitted information is excepted under section 552.103 of the Government Code, section 552.103 is a discretionary exception and therefore is not "other law" for purposes of section 552.022.<sup>1</sup> Accordingly, you must release the "Texas Highway Patrol Major Accident Investigation" to the requestor.

We turn now to your arguments under section 552.103 for the remaining submitted information. Section 552.103 provides in pertinent part:

(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 department maintains 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 on the date that the governmental body receives the request for information 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, 481 (Tex. App.--Austin 1997, no pet.); *see also 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); Gov't Code § 552.103(c). The department must meet both prongs of this test for information to be excepted under section 552.103(a).

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<sup>1</sup>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. 665 at 2 n.5 (2000) (governmental body may waive litigation exception, section 552.103), 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general). *See also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.-- Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

A governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture” when establishing that litigation is reasonably anticipated. *See* Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See id.* In this case, you state that the requestor “informed the Department at the time of filing his request for information on October 22, 2002 that he would also be filing a notice of claim against the Department.” You further state that you received a letter in compliance with the Texas Tort Claims Act; however, you state that the department did not receive this letter until October 31, 2002, nine days after the department received the information request. Therefore, based on our review of your arguments and the submitted information, we conclude that you have not adequately demonstrated that the department reasonably anticipated litigation on the date the department received the request for information. *See* Open Records Decision Nos. 555 (1990), 518 at 5 (1989) (litigation must be “realistically contemplated”); *see also* Open Records Decision Nos. 361 at 2 (1983) (fact that individual has hired an attorney or that request for information was made by attorney, does not, without more, demonstrate that litigation is reasonably anticipated), 331 (1982) (if individual publicly threatens to bring suit against governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated). Accordingly, the department may not withhold the remaining submitted information from disclosure pursuant to section 552.103 of the Government Code.

We note, however, that the remaining submitted information includes a Texas driver’s license number, license plate number, and vehicle identification number. Section 552.130 of the Government Code excepts from public disclosure information relating to a driver’s license or motor vehicle title or registration issued by an agency of this state. Thus, the department must withhold from disclosure the information we have marked pursuant to section 552.130. We note that the submitted information also includes motor vehicle information of another state. Section 552.130 by its terms applies only to motor vehicle information issued by an agency of this state. *See* Gov’t Code § 552.130. Therefore, the California registration number and vehicle identification number are not excepted from disclosure under section 552.130. The remaining submitted information must be released to the requestor.

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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 175085

Enc: Submitted documents

c: Mr. Marvin T. Bradeen  
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(w/o enclosures)