



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2009

Ms. Julia Gannaway
Lynn Pham & Ross, LLP
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2009-10087

Dear Ms. Gannaway:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 349669.

The Waxahachie Police Department (the "department"), which you represent, received a request for all information pertaining to two specified incidents involving a named officer. 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 representative sample of information.¹

Initially, we note that the submitted information includes a CR-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* The requestor has provided the department with two of the three pieces of information pursuant to section 550.065(c)(4). Therefore, the

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

submitted accident report, which we have marked, must be released to the requestor under section 550.065(c)(4) of the Transportation Code.

Next, we note section 552.022 of the Government Code is applicable to portions of the remaining information. Section 552.022(a)(1) provides for required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]” unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov’t Code § 552.022(a)(1). Section 552.022(a)(17) provides for required disclosure of “information that is also contained in a public court record[,]” unless the information is expressly confidential under other law. *Id.* § 552.022(a)(17). In this instance, the remaining information includes completed reports that are subject to section 552.022(a)(1) and a court-filed document that is subject to section 552.022(a)(17). We have marked the information subject to section 552.022. You claim this information is excepted from disclosure under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception to disclosure that protects the governmental body’s interests and is therefore not “other law” that makes information expressly confidential for purposes of section 552.022(a). *See 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); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Consequently, the department may not withhold the completed reports and the court-filed document under section 552.103 of the Government Code. However, because section 552.130 of the Government Code is “other law” for purposes of section 552.022, we will consider the applicability of this exception to the information at issue.²

Section 552.130 excepts from disclosure information related 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. *See* Gov’t Code § 552.130(a)(1), (2). Therefore, the department must withhold the information we have marked pursuant to section 552.130 of the Government Code.

We now address your argument under section 552.103 of the Government Code for the remaining information not subject to section 552.022. Section 552.103 provides as follows:

(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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

...

(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 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 on the date the governmental body received the request, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (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). The department must meet both prongs of this test for information to be excepted under 552.103(a).

You inform us that the department suspended the officer at issue indefinitely. You also inform us the officer has appealed the disciplinary action, and the appeal is still pending. We note that municipal civil service appeals are governed by chapter 143 of the Local Government Code. *See* Local Gov't Code §§ 143.057, 143.127-143.131. This office has determined that such appeal proceedings constitute litigation for purposes of section 552.103. *Cf.* Open Records Decision No. 588 (1991). Thus, we agree litigation was pending on the date the department received the present request for information. You also state the submitted information is related to the pending litigation. Based on your representations and our review, we conclude section 552.103 is generally applicable to the remaining information.

We note, however, the officer at issue appears to have already seen or had access to some of the information at issue. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. *See* ORD 551 at 4-5. Thus, when the opposing party has seen or had access to information relating to pending litigation, there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Consequently, the information the requestor has seen or had access to, which we have marked, may not be withheld under section 552.103. Therefore, with the exception of the information the opposing party has seen or had access to, the department may withhold the remaining information under section 552.103 of the Government Code. We further note that the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, (1) the department must release the submitted CR-3 accident report to this requestor under section 550.065(c)(4) of the Transportation Code; (2) the department must withhold the information we have marked under section 552.130 of the Government Code; (3) the department must release the remaining information subject to subsections 552.022(a)(1) and (a)(17) of the Government Code;³ and (4) with the exception of the information the opposing party has seen or had access to, which must be released, the department may withhold the remaining information under section 552.103 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 349669

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note this information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.