



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2010

Ms. Elizabeth Lutton
Legal Advisor
Dallas County Sheriff's Department
133 Riverfront, LB-31
Dallas, Texas 75207-4313

OR2010-05772

Dear Ms. Lutton:

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# 377317.

The Dallas County Sheriff's Department (the "sheriff") received a request for the complete file pertaining to a specified motor vehicle accident. 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.

Initially, we note that portions of the submitted information were not in existence when the sheriff received the present request for information and, thus, are not responsive to the request. This decision does not address the public availability of the nonresponsive information, which we have marked, and the sheriff need not release that information to the requestor.

Next, we note that the submitted information includes a CRB-3 crash 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.* In this instance, the requestor has provided the sheriff with all three pieces of information pursuant to section 550.065(c)(4). You claim the crash report form at issue is excepted from disclosure under section 552.103 of the Government Code. However, the exceptions found in the Act generally do not apply to

information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, the sheriff must release the crash report form, which we have marked, to this requestor pursuant to 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). In this instance, the remaining information includes completed reports that are subject to section 552.022(a)(1). 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 sheriff may not withhold the completed reports 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.¹

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state, a motor vehicle title or registration issued by an agency of this state, or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *See* Gov’t Code § 552.130(a). Therefore, the sheriff must withhold the Texas license plate, driver’s license, personal identification, and vehicle identification numbers we have marked under section 552.130 of the Government Code.² As you raise no further exceptions to disclosure of the remaining information subject to section 552.022 of the Government Code, that information must be released to the requestor.

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:

¹The 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).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

(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.

Id. § 552.103(a), (c). 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 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). A governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See* Gov't Code § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). In this instance, you raise section 552.103 on behalf of the Dallas County District Attorney's Office (the "district attorney"). In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. You have provided us with a representation from the district attorney stating that the district attorney seeks to withhold the information at issue under section 552.103. The district attorney argues that the information at issue relates to a pending criminal prosecution. We note, however, that the submitted information shows that the defendant at issue was not arrested until after the date the sheriff received the present request for information. We further note that the case against the defendant at issue was not filed until after the date the sheriff received the present request for information. Therefore, we determine that the district attorney has failed to show that litigation was pending when the sheriff received the request for information. Therefore, the sheriff may not withhold any of the remaining information under section 552.103 of the Government Code on behalf of the district attorney.

In summary, the sheriff must withhold the information we have marked under section 552.130 of the Government Code. The remaining responsive information must be released to the requestor.³

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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 377317

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the remaining 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. Further, we note that the remaining information contains information that may be confidential with regard to the general public, but to which the requestor has a right of access under section 552.023 of the Government Code. Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a). Should the sheriff receive another request for this information from someone other than the requestor, the sheriff should again seek a decision from this office.