



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2010

Mr. Randy A. Stoneroad
Deputy City Attorney
City of Temple
2 North Main Street Suite 308
Temple, Texas 76501

OR2010-14064

Dear Mr. Stoneroad:

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# 394094.

The Temple Police Department (the "department") received a request for information pertaining to a specified accident. You claim 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.

The submitted information includes a CR-3 accident report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged for the confidential use of certain specified entities. Transp. Code § 550.065(b). 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) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the department with the date of the accident and the name of a person involved in

the accident pursuant to section 550.065(c)(4). Although you claim the accident report is excepted from disclosure under section 552.103 of the Government Code, we note the exceptions found in the Act generally do not apply to information to which an individual has a statutory right of access. *See* Open Records Decision No. 525 (1989). Thus, the department must release the accident report, which we have marked, pursuant to section 550.065(c)(4) of the Transportation Code.

Next, we note some of the remaining information is subject to section 552.022 of the Government Code, which states 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[.]

Gov't Code § 552.022(a)(1). The remaining information contains a completed supervisor's investigation report and a report of findings from the vehicle accident review board. Pursuant to section 552.022(a)(1) of the Government Code, a completed report or investigation is expressly public, unless it is excepted under section 552.108 of the Government Code or is expressly confidential under "other law." Section 552.103 of the Government Code is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Consequently, this completed report and investigation, which we have marked, may not be withheld under section 552.103 of the Government Code. We note, however, a portion of the supervisor's investigation report is excepted from disclosure under section 552.130 of the Government Code.¹ Because section 552.130 is "other law" for purposes of section 552.022(a)(1), we will consider the applicability of this exception to this report.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

The supervisor's investigation report contains a Texas license plate number belonging to an individual other than the requestor's client.² Section 552.130 of the Government Code excepts information relating to a motor vehicle title or registration issued by a Texas agency. Gov't Code § 552.130(a)(2). Therefore, the department must withhold the Texas license plate number we have marked under section 552.130.³ As you have not claimed any other exceptions to disclosure for the remaining information in the supervisor's investigation report or the report of findings from the vehicle accident review board, that information must be released.

You assert the remaining information is excepted under section 552.103 of the Government Code, which provides:

(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 the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, 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

²The requestor in this instance has a right of access to his client's Texas motor vehicle record information that otherwise would be protected under section 552.130 of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Thus, if the department receives another request for this particular information from a different requestor, the department should again seek a decision from this office.

³We 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 a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing the claim that litigation may ensue is more than mere conjecture." *Id.* Concrete evidence to support a claim litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You assert the department reasonably anticipates litigation pertaining to the remaining information because, prior to the department's receipt of the present request for information, the department received a letter from the requestor containing a specific threat to sue. You state that in this letter, the requestor, as the attorney for an individual involved in the accident, seeks compensation for alleged damages suffered by his client during the motor vehicle accident specified in the request. Based on your representations and our review, we conclude the department reasonably anticipated litigation when it received the request for information. You state the remaining information relates to the anticipated litigation because it is information that was compiled by the department pertaining to the accident. We agree the remaining information relates to the anticipated litigation. Accordingly, the department may withhold the remaining information under section 552.103 of the Government Code.

However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. 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(a), and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the department must release the marked accident report under section 552.101 of the Government Code in conjunction with section 550.065(c)(4) of the Transportation Code. With the exception of the marked Texas license plate number, which must be withheld under section 552.130 of the Government Code, the department must release the completed report and investigation we marked pursuant to section 552.022(a)(1) of the

Government Code. The remaining information may be withheld 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, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/em

Ref: ID# 394094

Enc. Submitted documents

c: Requestor
(w/o enclosures)
