



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2011

Ms. Carolyn Foster
Deputy General Counsel
Parkland Health & Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2011-13710

Dear Ms. Foster:

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# 430657.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System ("Parkland") received a request for statements, photographs, accident reports, and appraisals related to a specified automobile accident. You claim that the submitted information is excepted from disclosure under sections 552.102, 552.103, 552.107, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a Texas Peace Officer's Crash Report completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). However, section 550.065(c)(4) provides for 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.¹ In this instance, the requestor has provided the district with two of the three specified pieces of information pursuant to section 550.065(c)(4). Although you seek to withhold this information under section 552.117 of the Government Code, we note a statutory right of access generally prevails over the exceptions to public disclosure under the Act. *See, e.g.*, Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Accordingly, the submitted Texas Peace Officer's Crash Report in Exhibit F must be released in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

You assert the information in Exhibits B, D, and E is excepted from disclosure under section 552.103 of the Government Code, which provides in relevant 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). 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 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).

¹See Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

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 that the claim that litigation may ensue is more than mere conjecture.” *Id.* This office has concluded a governmental body’s receipt of a claim letter it represents to be in compliance with the notice requirements of the Texas Tort Claims Act (the “TTCA”), chapter 101 of the Civil Practice and Remedies Code, is sufficient to establish litigation is reasonably anticipated.

You assert Parkland reasonably anticipates litigation pertaining to the remaining information in Exhibits B, D, and E because on July 6, 2011, the requestor submitted a notice of claim letter. You further assert that although the requestor “does not specifically cite the [TTCA],” the claim letter meets the requirements of the TTCA. Based on your representations and our review, we conclude Parkland reasonably anticipated litigation when it received the request for information. You assert the information in Exhibits B, D, and E relates to the litigation because it pertains to the automobile accident that is the basis of the anticipated litigation against Parkland. Thus, we agree the information in Exhibits B, D, and E relates to the anticipated litigation. Accordingly, Parkland may withhold the information in Exhibits B, D, and E under section 552.103 of the Government Code.²

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 or is no longer anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, Parkland must release the submitted Texas Peace Officer’s Crash Report in Exhibit F in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. Parkland may withhold the information in Exhibits B, D, and E 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,

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,

A handwritten signature in black ink, appearing to read 'VB', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 430657

Enc. Submitted documents

c: Requestor
(w/o enclosures)