



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2011

Ms. Shanna S. Cargill
Attorney for the City of Krum
Hayes, Berry, White & Vanzant, L.L.P.
P.O. Box 50149
Denton, Texas 76206

OR2011-18431

Dear Ms. Cargill:

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# 438940.

The City of Krum (the "city"), which you represent, received a request for all documentation regarding a specified motor vehicle accident involving a named police officer. You state the city has released some of the requested information. 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.

Initially, some of the submitted information is not responsive to the request for information because it was created after the request was received. This decision does not address the public availability of the non-responsive information, which we have marked, and that information need not be released in response to the present request.

Next, we note the responsive information includes a CR-3 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. Section 552.101 encompasses information made confidential by other statutes. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. 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. *See id.* § 550.065(c)(4). In this instance, the requestor has not provided the city with two of the three requisite pieces of information specified by section 550.065(c)(4). Accordingly, the city must withhold the CR-3 accident report from the requestor under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code.

We next note that some of the responsive information is subject to section 552.022 of the Government Code. This section provides in pertinent 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 unless made confidential under this chapter or other law:

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(5), (17). The responsive information contains a completed estimate that is subject to section 552.022(a)(5) and a court-filed document that is subject to section 552.022(a)(17). Although you seek to withhold the information at issue under section 552.103 of the Government Code, this is a discretionary exception and does not make information confidential under the Act. *Id.* §§ 3-26, 28-37 (providing for “confidentiality” of information under specified exceptions); *see Dallas Area Rapid Transit v. Dallas Morning News*, S.W.3d 69, 475-6 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the city may not withhold the responsive information subject to section 552.022 under section 552.103. However, we note that portions of this information are subject to section 552.130 of the Government Code.¹ Section 552.130 makes information confidential under chapter 552. Thus, we will address the applicability of this section to the responsive information that is subject to section 552.022. We will also

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).

consider the applicability of section 552.103 to the responsive information that is not subject to section 552.022.

We note the responsive information that is subject to section 552.022 contains motor vehicle record information that is subject to section 552.130(a)(2) of the Government Code. This section provides that information relating to a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(2). The information at issue contains a vehicle identification number and license plate number. Therefore, the city must withhold this information, which we have marked, under section 552.130(a)(2).² However, as you raise no other exceptions to disclosure of the remaining responsive information that is subject to section 552.022, it must be released.

You raise section 552.103 of the Government Code for the remaining responsive information. Section 552.103 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.

Id. § 552.103(a), (c). The 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 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

²We note this office 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.

ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us that a lawsuit concerning the specified motor vehicle accident was filed against the city in the 431st Judicial District Court in Denton County. We understand this lawsuit was filed before the request for information was received. Based upon your representations and our review, we find litigation involving the city was pending when it received the request. You state the remaining responsive information is related to this pending litigation. Based on your representations and our review, we conclude this information is related to the pending litigation for purposes of section 552.103.

However, some of the information at issue may have been seen by the opposing parties in the pending litigation. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, information that has been obtained from or provided to an opposing party may not be withheld from public disclosure under section 552.103. *See* Open Records Decision Nos. 349(1982), 320(1982). Therefore, to the extent any of the remaining responsive information has been obtained from or provided to the city by the opposing parties, the city must release it. To the extent any of this information has not been obtained from or provided to the city by the opposing parties, the city may withhold it under section 552.103. We note, however, the applicability of section 552.103(a) ends when the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

In summary, the city must withhold the CR-3 accident report from the requestor under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. The city must withhold the motor vehicle record information we marked under section 552.130(a)(2) of the Government Code. The remaining information that we have marked pursuant to section 552.022 of the Government Code must be released. The city may withhold under section 552.103 of the Government Code any remaining responsive information that has not been seen by the opposing parties to the pending litigation.

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,

A handwritten signature in black ink, appearing to read 'K. Conyer', with a horizontal line extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 438940

Enc. Submitted documents

c: Requestor
(w/o enclosures)