



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2012

Ms. Kerri L. Butcher  
Interim Chief Counsel  
Capital Metropolitan Transportation Authority  
2910 East Fifth Street  
Austin, Texas 78702

OR2012-00177

Dear Ms. Butcher:

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# 441485.

Capital Metropolitan Transportation Authority (the "authority") received a request for all information pertaining to a specified automobile/pedestrian accident involving the requestor's client. 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, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

Without limiting the amount or kind of information that is public information under [the Act], the following categories of information are public information and not excepted from required disclosure unless made confidential under [the Act] or 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 submitted information contains completed internal accident reports, a completed CR-3 accident report, and a completed supervisor summary report. Although you assert these reports are excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See 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. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the authority may not withhold the completed reports under section 552.103 of the Government Code. As you have not claimed any other exceptions to disclosure, the authority must release the completed supervisor summary report, which we have marked.

It appears the submitted CR-3 accident report 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."<sup>1</sup> 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 authority with the date of the accident, the name of a person involved in the accident, and the specific location of the accident pursuant to section 550.065(c)(4). Thus, the requestor has a statutory right of access to the CR-3 accident report pursuant to section 550.065(c)(4) of the Transportation Code.

In this instance, however, you have redacted dates of birth and driver's license, title, and registration information from the CR-3 accident report. Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of

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

Public Accounts.<sup>2</sup> *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license, 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)(1), (2).

A statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information that 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). Because section 552.102 is a general exception to disclosure under the Act, the requestor's statutory access under section 550.065 of the Transportation Code prevails, and the authority may not withhold the dates of birth in the CR-3 accident report. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the access provided under section 550.065 and the confidentiality provided under section 552.130.

Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). In this instance, section 550.065 specifically provides access to only accident reports of the type at issue, while section 552.130 generally excepts motor vehicle record information maintained in any context. Thus, we conclude the access to accident reports provided under section 550.065 is more specific than the general confidentiality provided under section 552.130. Consequently, the authority may not withhold any portion of the submitted CR-3 accident report under section 552.130 of the Government Code. Therefore, the authority must release the CR-3 accident report, which we have marked, in its entirety to the requestor pursuant to section 550.065(c)(4) of the Transportation Code.

You have also redacted a driver's license number and expiration date from the submitted internal accident reports. Section 552.130(c) allows governmental bodies to redact, among

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<sup>2</sup>Thus, the court's decision allows for the withholding of a governmental body employee's date of birth when that information is held by the governmental body in an employment context. The decision does not, however, authorize governmental bodies to redact employees' dates of birth without first seeking a ruling from this office.

other things, the types of driver's license information at issue.<sup>3</sup> You have not claimed any other exceptions to disclosure for the remaining information in the internal accident reports. Thus, with the exception of the driver's license information you have redacted, the authority must release the submitted internal accident reports, which we have marked.

You claim the remaining information, which is not subject to section 552.022, 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).

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

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<sup>3</sup>Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, a motor vehicle operator's or driver's license or permit issued by an agency of this state, or another state or country, and a personal identification document issued by an agency of this state, or another state or country, or a local agency authorized to issue an identification document. Gov't Code § 552.130(c); *see id.* § 552.130(d) (entitling requestor to appeal governmental body's decision to withhold information pursuant to section 552.130(c) to attorney general), .130(e) (requiring governmental body that withholds information pursuant to section 552.130(c) to provide notice to requestor).

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.* 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. *See* Open Records Decision No. 638 at 4 (1996).

You assert the authority reasonably anticipates litigation pertaining to the remaining information because the authority received a notice of claim letter from the requestor prior to receiving the request for information. You indicate the claim letter meets the requirements of the TTCA, and alleges the authority’s liability for injuries sustained by the requestor’s client as a result of the automobile/pedestrian accident specified in the request. Based on your representations and our review, we conclude the authority reasonably anticipated litigation when it received the request for information. You state the remaining information relates to the litigation because it pertains to the automobile/pedestrian accident at issue in the anticipated litigation. Therefore, we find section 552.103(a) applies to the remaining information.

We note, 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 litigation is not excepted from disclosure under section 552.103(a). In this instance, the requestor and his client have already seen the submitted letters sent to or received from them. Therefore, because the opposing party in the anticipated litigation has seen this information, it may not be withheld under section 552.103 of the Government Code. As you have not claimed any other exceptions to disclosure, the authority must release the letters we have marked. The authority may withhold the remaining information under section 552.103(a) of the Government Code. We note the applicability of section 552.103(a) ends once the litigation has concluded or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the authority must release the supervisor summary report we have marked pursuant to section 552.022(a)(1) of the Government Code. The authority must release the CR-3 accident report we have marked pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of the driver’s license information you have redacted, the authority must release the internal accident reports we have marked pursuant to section 552.022(a)(1) of the Government Code. With the exception of the letters we have marked for release, the authority may withhold the remaining information under section 552.103(a) 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](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 cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 441485

Enc. Submitted documents

c: Requestor  
(w/o enclosures)