



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2012

Ms. Tiffany Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-02207

Dear Ms. Evans:

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# 445364 (GC No. 19150).

The City of Houston (the "city") received a request for "any and all information pertaining" to a specified accident, "including, but not limited to, all Officer's notes, supplements, photos, videos, diagrams, laboratory reports and driver/passenger/witness statements and contact information." 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 the submitted information contains a CR-3 accident report form 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) 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). In this instance, the requestor has provided the city with the requisite pieces of information specified by the statute. Although you seek to withhold this information under section 552.103 of the Government Code, we note a statutory right of access generally prevails over the exceptions to public disclosure under the Act. *See* 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

at 3 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Accordingly, the city must release the submitted CR-3 accident report form, which we have marked, in its entirety pursuant to chapter 550 of the Transportation Code.

Next, we note the remaining information consists of a completed investigation, which is subject to section 552.022(a)(1) of the Government Code. 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 excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Gov’t Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See id.*; *see also 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), 663 (1999) (governmental body may waive section 552.103). Therefore, the city may not withhold the remaining information under section 552.103 of the Government Code. However, sections 552.1175 and 552.130 of the Government Code make information confidential under the Act for purposes of section 552.022, therefore, we will address the applicability of these exceptions to the remaining information.¹

We note portions of the remaining information may be subject to section 552.1175 of the Government Code. Section 552.1175 provides in relevant part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

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).

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1); Gov't Code § 552.1175(b). Section 552.1175 also encompasses a peace officer's personal cellular telephone number if the officer pays for the cellular telephone service with his or her own personal funds. The remaining information contains information pertaining to a city peace officer. Upon review, we find the city must withhold the cellular telephone number we have marked under section 552.1175 if the individual to whom this information concerns elects to restrict access to her information in accordance with section 552.1175(b), and if the officer concerned paid for the cellular telephone service with her own personal funds. If this individual made no election, or if the cellular telephone service was paid for with public funds, the city may not withhold the individual's information under section 552.1175.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, we find the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must release the submitted CR-3 report we have marked pursuant to section 550.065(c)(4) of the Transportation Code. The city must withhold the cellular telephone number we marked under section 552.1175 of the Government Code if the individual to whom this information concerns elects to restrict access to her information in accordance with section 552.1175(b), and if the officer concerned paid for the cellular telephone service with her own personal funds. If this individual made no election, or if the cellular telephone service was paid for with public funds, the city may not withhold the individual's information under section 552.1175 of the Government Code. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.²

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.

²We note the remaining information includes a social security number. 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.

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 that reads "Sean Opperman". The signature is written in a cursive, flowing style.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 445364

Enc. Submitted documents

c: Requestor
(w/o enclosures)