



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 30, 2013

Ms. Ellen H. Spalding  
Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2013-08977

Dear Ms. Spalding:

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# 488758.

The Santa Fe Independent School District (the "district"), which you represent, received a request for information related to a specified traffic accident. We understand the district will redact information pursuant to section 552.117 of the Government Code, as permitted by section 552.024(c) of the Government Code, sections 552.130, 552.136, and 552.147 of the Government Code, as well as Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.102 and 552.103 of

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<sup>1</sup>Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov't Code §§ 552.117, .024(c). Section 552.130(c) authorizes a governmental body to redact information protected by section 552.130(a)(1) and (a)(3) without the necessity of requesting a decision under the Act. *See id.* § 552.130(c)-(e) (providing procedures for redaction of information). Section 552.136(c) of the Government Code permits a governmental body to redact the information described in section 552.136(b) without the necessity of requesting a decision from this office. *See id.* § 552.136(c)-(e) (providing procedures for redaction of information). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including a Texas license plate number under section 552.130(a)(2) of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. 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. *Id.* § 552.147(b).

the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

The submitted information includes a CR-3 accident report subject to section 550.065 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 for the confidential use of certain specified entities. *Id.* § 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 requisite pieces of information. 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.

However, you seek to withhold the CR-3 accident report under sections 552.102 and 552.103 of the Government Code, and have redacted information under sections 552.130, 552.136, and 552.137 of the Government Code. We note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 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 sections 552.102, 552.103, 552.117, 552.136, and 552.137 are general exceptions to disclosure under the Act, the requestor's statutory access under section 550.065 of the Transportation Code prevails, and the district may not withhold information subject to those exceptions from 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). 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

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<sup>2</sup>We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

section 550.065 is more specific than the general confidentiality provided under section 552.130. Consequently, the district may not withhold any portion of the submitted CR-3 accident report under section 552.130 of the Government Code. Therefore, the district must release the submitted CR-3 accident report in its entirety to the requestor pursuant to section 550.065(c)(4) of the Transportation Code.

Next, we address section 552.103 for the remaining information. Section 552.103 of the Government Code provides in relevant part as follows:

(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 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 was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *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).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See id.* In Open Records Decision No. 638 (1996), this office stated a governmental body has met its burden of showing litigation is reasonably anticipated by representing it received a notice-of-claim letter that is in compliance with the Texas Tort Claims Act ("TTCA"), chapter 101 of the Civil Practices and Remedies Code, or an applicable municipal ordinance, is sufficient to establish that litigation is reasonably anticipated. *See* Open Records Decision No. 638 at 4 (1996). If that representation is not made, the receipt of a claim letter is a factor we will consider in

determining, from the totality of the circumstances presented, whether the governmental body has established that litigation is reasonably anticipated. *Id.*

You state, and submit supporting documentation showing, the district received a claim letter from the requestor on the same date it received the present request for information. In the claim letter, the requestor alleges bodily injury and property damage to his clients stemming from a traffic accident allegedly caused by a district school bus driver operating a district school bus. You do not state this letter meets the requirements of the TTCA. However, based on our review of the claim letter, the information at issue, and the totality of the circumstances, we find the district reasonably anticipated litigation on the date it received the request. We also find the remaining information relates to the anticipated litigation. Thus, we conclude the district may withhold the remaining information under section 552.103.

We note once the information at issue has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has concluded or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the district must release the submitted CR-3 accident report in its entirety to the requestor pursuant to section 550.065(c)(4) of the Transportation Code. The district may withhold the remaining information 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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 488758

Enc. Submitted documents

c: Requestor  
(w/o enclosures)