



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2020

Ms. ML Calcote
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2020-30367

Dear Ms. Calcote:

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# 856347 (PIR 20-2883).

The Texas Department of Public Safety (the "department") received a request for certain communications between named department employees pertaining to the requestor during a stated time period. We understand the department will release some of the requested information upon payment of costs. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 section 411.00755(b) of the Government Code which states, in pertinent part, "[t]he personnel records of a commissioned officer of the department may not be disclosed or otherwise made available to the public[.]" *Id.* § 411.00755(b). Thus, section 411.00755 excepts from disclosure the personnel records of commissioned department officers. Section 411.00755 defines a personnel record, in part, as "any letter memorandum, or document maintained by the department that relates to a commissioned officer of the department[.]" *Id.* § 411.00755(a).

You seek to withhold some of the submitted information under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code. The information at issue consists of information entered into the BLUETEAM incident reporting system, which you state replaced the HQ-12 Incident Report forms previously used by the department. We understand HQ-12 incident reports either include a detailed description and evaluation of commissioned officers' actions in situations involving

pursuits, as well as situations involving use of force, firearm discharges, and fleet occurrences, or are a summary of those actions and evaluations. We understand the documents at issue submitted to this office as responsive to the request are the functional equivalent of the HQ-12 forms, which this office has previously found to be excepted from disclosure under section 411.00755. *See, e.g.*, Open Records Letter No. 2014-19011 (2014). You explain BLUETEAM is an intervention tool for employees and its purpose is to, among other things, improve officer performance and supervisor accountability, reduce complaints, and identify training needs. Upon review, we agree the information at issue constitutes personnel records of commissioned officers under section 411.00755(a)(1). We note the information at issue pertains to two department officers, one of whom is the requestor. Section 411.00755(c)(3) states the “department may release any personnel record of a commissioned officer . . . with written authorization of the officer who is the subject of the record.” Gov’t Code § 411.00755(c)(3). Although you acknowledge that an employee generally has a right of access to information in his own personnel file, we understand you to claim the department does not have the authorization to release the information at issue to the requestor pursuant to section 411.00755(c)(3) because the requestor has not provided the department with written authorization from the other officer who was involved in the investigation at issue. *See id.* However, we note release of any personnel record of a commissioned officer under section 411.00755(c)(3) requires the “written authorization of the officer who is the subject of the record.” *Id.* In this instance, you acknowledge that the record at issue consists of an investigation maintained in the requestor’s personnel file and that the requestor is the subject of the investigation. Thus, although the investigation involves multiple officers, we conclude that section 411.00755(c)(3) does not require the written authorization of every officer involved. Therefore, based on your representations and our review of the information at issue, we conclude that section 411.00755(c)(3) is applicable in this instance. Accordingly, the department must generally release the information at issue, which we have indicated, to this requestor pursuant to section 411.00755(c)(3). Although you assert the information at issue is excepted from disclosure under section 552.103 of the Government Code, a statutory right of access prevails over the Act’s general exceptions to public 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 section 552.103 is a general exception under the Act, the requestor’s statutory right of access under section 411.00755(c)(3) prevails. Therefore, the department may not withhold any portion of the information at issue under section 552.103 of the Government Code.

We note portions of the information at issue are subject to section 552.130 of the Government Code.¹ Section 552.130 provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. Accordingly, the department must generally withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, as previously noted, the requestor has a statutory right of access to the information at issue pursuant to section 411.00755(c)(3) of the Government Code. As noted above, a statutory right of access generally prevails

¹ 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).

over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451 at 4. 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 confidentiality provided under section 552.130 of the Government Code and the right of access provided under section 411.00755(c)(3). Where information falls within both a general and specific provision of law, the specific provision prevails over the general. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless general provision is later enactment and manifest intent is that general provision prevails); *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). Although section 411.00755(c)(3) of the Government Code provides a department officer with a general right of access to all personnel files in which that officer is the subject of the record, section 552.130 specifically protects motor vehicle record information. Thus, we find the confidentiality provided by section 552.130 of the Government Code is more specific than, and prevails over, the right of access provided by section 411.00755(c)(3). Accordingly, notwithstanding section 411.00755(c)(3), we conclude the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, we will address your argument against disclosure of 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 section 552.103(a) 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. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *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). *See* ORD 551.

You state, and provide documentation showing, prior to the department's receipt of the instant request, a lawsuit styled *West v. Texas Dep't of Public Safety*, Cause

No. D-1-GN-19-002112, was filed and is currently pending in the 53rd District Court of Travis County, Texas. Therefore, we agree litigation was pending on the date the department received the instant request for information. You also state the information at issue pertains to the substance of the lawsuit claims. Based on these representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude section 552.103 of the Government Code is generally applicable to the remaining information.

We note, however, the opposing party has seen or had access to some of the information at issue. The purpose of section 552.103 of the Government Code is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. *See* ORD 551 at 4-5. Thus, once the opposing party has seen or had access to information that is related to the litigation, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, the information at issue, which we have marked for release, may not be withheld under section 552.103(a). Accordingly, with the exception of the information we have marked for release, the department may withhold the remaining information under section 552.103 of the Government Code. We note the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW 575 (1982); Open Records Decision No. 350 (1982).

In summary, the department must release the information we have indicated to this requestor pursuant to section 411.00755(c)(3) of the Government Code; however, in releasing the information, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. With the exception of the information we have marked for release, the department 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jm

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Enc. Submitted documents

c: Requestor
(w/o enclosures)