



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 2, 2022

Ms. Anastasia Broadfoot  
Assistant General Counsel  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

OR2022-34009

Dear Ms. Broadfoot:

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# 982013 (Request ID# R006424-081122).

The Texas Alcoholic Beverage Commission (the "commission") received a request for information pertaining to a specified investigation. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Some of the submitted information is subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. *See* Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the requestor is a person listed under section 550.065(c). Although the commission asserts sections 552.103 and 552.108 to withhold the information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.,* 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 552.103 and 552.108 are general exceptions under the Act, the requestor's statutory access under section 550.065(c) prevails and the commission may not withhold the information at issue under section 552.103 or section 552.108 of the Government Code. Thus, the commission must release the accident report to this requestor pursuant to section 550.065(c) of the Transportation Code.

Section 552.103 of the Government Code provides, in 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 (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, 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). We note contested cases conducted under the Administrative Procedure Act (the "APA"), chapter 2001 of the Government Code, are considered litigation for purposes of section 552.103. *See* Open Records Decision No. 588 at 7 (1991). We further note a contested case before the State Office of Administrative Hearings (the "SOAH") is considered litigation for the purposes of the APA. *See id.*

The commission states the remaining information pertains to a contested administrative hearing that had been filed and was pending when the commission received the request. The commission informs us commission hearings are conducted by the SOAH and governed by the APA. *See* Alco. Bev. Code § 5.43 (designating SOAH to conduct certain administrative hearings); 16 TAC § 37.2 (requiring all contested cases under the Alcoholic Beverage Code to comply with the APA). Based on these representations and our review, we determine litigation was pending when the commission received the request for information. The commission also states, and we agree, the remaining information relates to the litigation for purposes of section 552.103. Accordingly, the commission may generally withhold the remaining information under section 552.103 of the Government Code.

However, the information at issue involves alleged criminal activity. We note information normally found on the front page of an offense or incident report is generally considered public. *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). This office has stated basic information about a crime may not be withheld under section 552.103 of the Government Code even if it is related to the litigation. Open Records Decision No. 362 (1983). Accordingly, with the exception of the basic information, which you state has been released, the commission may withhold the remaining information under section 552.103 of the Government Code.<sup>1</sup>

Generally, 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 parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the commission must release the accident report to this requestor pursuant to section 550.065(c) of the Transportation Code. With the exception of the basic information, which the commission states has been released, the commission 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.

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information, except to note basic information may not generally be withheld under section 552.108. *See* Gov't Code § 552.108(c).

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,

Meagan Hunter  
Assistant Attorney General  
Open Records Division

MH/jxd

Ref: ID# 982013

Enc. Submitted documents

c: Requestor  
(w/o enclosures)