



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 20, 1995

Mr. Mark B. Taylor  
City Attorney  
City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666

OR95-066

Dear Mr. Taylor:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).<sup>1</sup> Your request was assigned ID# 22245.

The City of San Marcos (the "city") received an open records request for disclosure of automobile accident reports on a weekly basis. The requestor also asked for (1) copies of other open records requests that sought access to accident reports and (2) an estimate of the number of accident reports filed on a weekly, monthly, or yearly basis by the city police department. You contend that accident reports and the open records requests are excepted from disclosure pursuant to section 552.103(a).<sup>2</sup>

As to the automobile accident reports, the city must treat these reports as public information. Under a law that went into effect September 1, 1993, accident reports were made privileged and confidential. The statute provided that such reports could not be released until 180 days after the accident, except to certain categories of individuals. V.T.C.S. art. 6701d § 47. However, those provisions were found unconstitutional and unenforceable by the United States District Court for the Southern District of Texas, in *Moore v. Morales*, 843 F. Supp. 1124. When an amendatory act is invalid, either for failure to observe constitutional requirements pertaining to its enactment or for violation

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<sup>1</sup>We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

<sup>2</sup>Since you do not object to the release of information about the number of filed accident reports, we assume this information has already been disclosed to the requestor.

of constitutional rights, the amendment is ineffective and the original enactment ordinarily remains in full force and effect. *Culberson v. Ashford*, 18 S.W.2d 585 (Tex. 1929); *see generally* 67 TEX. JUR. 3d *Statutes* § 56 (1989). Prior to the 1993 change, section 47 of article 6701d specifically made accident reports public information. *See* Open Records Decision No. 378 (1983) at 2.

Because article 6701d specifically makes the accident reports public information, the city must release the accident reports upon request. We note, however, that the city is not required to comply with a standing request for information on a weekly or periodic basis. Open Records Decision No. 465 (1987) at 1. The city is also not obliged to keep the requestor informed as new information comes into existence after a request is made. Open Records Decision No. 452 (1986) at 3 (request applies only to information already in existence). However, the city may voluntarily comply with a standing request or the requestor may periodically submit open records requests for current information.

The city also must release the other requested information. To show the applicability of section 552.103(a), a governmental body must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation *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 (1990) at 4. You refer to *Moore v. Morales*, 843 F. Supp. 1124 (1994), which at the time of the request was pending in the United States District Court for the Southern District of Texas. That court imposed a permanent injunction against enforcement of article 6701d, sections 47(a), (b), (c) and (f), V.T.C.S. (concerning release of accident reports for 180 days after accident); and against enforcement of Penal Code sections 38.12 (d)(2)(A), (B), (C) and (D) (prohibiting certain persons from written contact with various individuals, including those involved in an accident, for a 30 day period after the accident). You have not shown that other litigation is currently pending. Additionally, since you did not submit any of the records to this office for review we could not have determined if they were related to litigation.

Since accident reports are specifically made public information, and you have not shown the applicability of section 552.103(a), the information at issue must be disclosed. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling may be relied upon as a previous determination under section 552.301 regarding accident reports. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/LRD/rho

Ref: ID# 22245

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