



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 6, 1996

Mr. David Douglas
Assistant Chief
Legal Services
Texas Department of Public Safety
5805 N. Lamar Blvd.
Austin, Texas 78773-0001

OR96-1607

Dear Mr. Douglas:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 32703.

The Texas Department of Public Safety (the "department") received a request for seven (7) categories of information relating to an accident that occurred on State Highway 78, near Bonham, Texas on February 18, 1995. Specifically, the requestor seeks the following:

1. A copy of the completed accident report.
2. Copies of any field notes, or scale diagram constructed in connection with the accident.
3. Copies of any witness statements taken in connection with the accident.
4. Copies of any photos taken, reproduced from the negatives themselves.
5. The name and duty assignment of all DPS personnel involved in the investigation of the accident.
6. Information regarding the determination of the speed of the DPS vehicle just prior to impact, including the formulas and measurements etc. used in estimating the speed.

7. Information regarding any disciplinary action or reprimand against Officer Oliver, if such action was taken as a result of the accident referenced in this request.

You contend that most of the requested information is excepted from disclosure pursuant to sections 552.103(a) and 552.119 of the Government Code.

Included among the documents you seek to withhold is an accident report form that appears to have been completed by a department investigator in accordance with chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). The Seventy Fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d,¹ amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413, 4414. As amended, section 47(b)(1) provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report *is required to release a copy of the report* on request to:

....

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident

Id. (emphasis added). Under this provision, the department "is required to release" a copy of an accident report to a person who provides the department with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor provided the department with the date of the accident, the names of persons involved in the accident, as

¹ Effective September 1, 1995, article 6701d was repealed and codified as part of the Transportation Code. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Sess. Law Serv. 1025, 1870-71. *See* Trans. Code § 550.065 (release of accident reports). The legislature did not intend a substantive change of the law but merely a recodification of existing law. *Id.* § 25, 1995 Tex. Sess. Law Serv. at 1871. The repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S., in House Bill 391, remains in effect as current law and may be found following section 550.065 of the Transportation Code. *See also* Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413, 4414.

well as the location of the accident. Thus, since the requestor has supplied the appropriate information you are required to release the accident report under section 47(b)(1)(D) of article 6701d, V.T.C.S.

Although you have raised sections 552.103 and 552.119 of the Government Code as exceptions to disclosure of the accident report, the Open Records Act's exceptions do not, as a general rule, apply to information expressly made public by other statutes. Open Records Decision No. 525 (1989) at 3.

You also assert that section 552.103(a) applies to the other records at issue. Section 552.103(a) applies to information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental entity 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 have submitted to this office a copy of the petition which shows litigation is pending. We have reviewed the other records, and our review shows that they relate to pending litigation. Thus, the department has met its burden of showing that litigation is pending and the other information at issue may be withheld pursuant to section 552.103(a).²

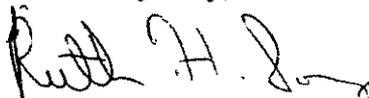
In reaching this conclusion, we assume that the opposing party to the litigation has not previously had access to the other records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interests exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing party in the anticipated litigation has seen or had access to these other records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section

² Because you may withhold these documents under section 552.103(a), we need not address your other argument against disclosure.

552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the department's discretion to release this information to the requestor. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the fact presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/ch

Ref.: ID# 32703

Enclosures: Open Records Decision No. 638 (1996))
Submitted documents

cc: Mr. Robert Christian
Assistant Attorney General
Tort Litigation
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711
(w/o enclosures)

Mr. R. W. Godbey
P. O. Box 185175
Ft. Worth, Texas 76181
(w/o enclosures)