



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 25, 1996

Mr. Edward Schweningen  
Assistant Criminal District Attorney  
Chief Civil Section  
Bexar County Justice Center  
300 Dolorosa, Suite 4049  
San Antonio, Texas 78205

OR96-2192

Dear Mr. Schweningen:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102625.

The Bexar County Sheriff's Department (the "sheriff") received a request for various information, some of which you say is excepted from required public disclosure under Government Code section 552.108. You also express your concern that the release of some of the information will violate the privacy rights of the deputy they concern. You inform us that the sheriff will release to the requestor the requested audio tapes.

One of the documents for which you raise section 552.108 is a Texas Peace Officer's Accident Report that appears to have been completed in accordance with chapter 550 of the Transportation Code. A statute outside the Open Records Act specifically speaks to the public disclosure of such reports. Section 47(b)(1) of V.T.C.S. article 6701d<sup>1</sup> reads in pertinent part as follows:

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<sup>1</sup>Effective September 1, 1995, article 6701d was repealed and codified as part of the Transportation Code.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* Transp. Code § 550.065 (release of accident report). 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 V.T.C.S. article 6701d 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.

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.

We are not certain whether the requestor here supplied the necessary information to obtain the accident report pursuant to section 47(b)(1). If that is the case, the sheriff must release the report to the requestor. *See* Open Records Decision No. 623 (1994) (exceptions generally inapplicable to information that statutes other than Open Records Act expressly make public).

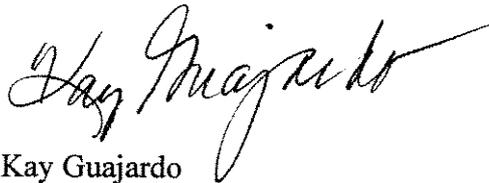
Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution. Gov’t Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Information normally found on the front page of an offense report is generally considered public. *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). We therefore conclude that except for front page offense report information, section 552.108 of the Government Code excepts the requested records from required public disclosure. On the other hand, you may choose to release all or part of the information that is not otherwise confidential by law. Gov’t Code § 552.007.

Finally, we address your privacy concerns. Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

We have reviewed the information at issue. It does not concern the individual's private affairs, but rather his job performance. Accordingly, the sheriff may not withhold this information pursuant to section 552.101. *See* Open Records Decision No. 455 (1987); *see also* Open Records Decision No. 484 (1987) (privacy does not protect unsubstantiated complaints against police officer.).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may 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,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 102625

Enclosures: Submitted documents

cc: Ms. Marilyn Moritz  
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(w/o enclosures)

