



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 9, 1997

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR97-1976

Dear Mr. Pigott:

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# 108283.

The Texas Department of Public Safety (the "department") received a request for "any and all information," including the police report, relating to an automobile accident that occurred on April 26, 1997. You submitted to this office for review, in response to the request, documents related to the incident investigation and report. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that included among the documents you seek to withhold is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). The Seventy Fifth Legislature, repealed, codified, and amended V.T.C.S. article 6701d, concerning the disclosure of accident report information. Act of May 29, 1997, S.B. 1069, § 13, 75th Leg., R.S. (to be codified at Transp. Code § 550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of section 13 of SB 1069 for ninety days. *Texas Daily Newspaper Association, et al., v. Morales, et al.*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Aug. 29, 1997) (order granting temporary injunction). A temporary injunction preserves the status quo until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth et al.* 163 Tex. 616, 358 S.W.2d 589 (1962). The Supreme Court has defined the status quo as "the last, actual peaceable, non-contested status that preceded the pending controversy." *Texas v. Southwestern Bell Telephone Co.*

526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of SB 1069 is governed by section 47 of article 6701d, V.T.C.S.¹

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

V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). Under this provision, a law enforcement agency “is required to release” a copy of an accident report to a person who provides the law enforcement agency 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 name of a person involved in the accident, as well as the location of the accident. Thus, you are required to release this information under section 47(b)(1)(D) of article 6701d, V.T.C.S. Although you have raised section 552.108 of the Government Code as an exception to disclosure, the Open Records Act’s exceptions do not, as a general rule, apply when the release of information is expressly controlled by other statutes. Open Records Decision No.

¹Although the Seventy Fourth Legislature repealed and codified article 6701d as part of the Transportation Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25 1995 Tex. Sess. Law Serv. 1025, 1870-71. Furthermore, the Seventy Fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, 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. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, 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. is the existing law regarding the availability of accident report information, 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.

525 (1989) at 3. We conclude that the accident report, in its entirety, must be released to the requestor.

The Seventy-Fifth Legislature also amended section 552.108 of the Government Code to read as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

See Gov't Code § 552.108. You state that criminal charges are pending as a result of the investigation of the accident by the investigating officer, and that the case is to be presented to a grand jury. As the requested records relate to a pending criminal prosecution, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. Therefore, most of the information may be withheld pursuant to section 552.108(a)(1).

We note, however, that you must release the type of information that is considered to be basic front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Gov't Code § 552.108(c)* (basic information about arrested person, arrest and crime not excepted by section 552.108); *Houston Chronicle Publ'g 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). Section 552.108 provides that you may withhold the remaining information from disclosure, although you may choose to release all or part of the information at issue that is not otherwise confidential by law. 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 facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Sam Haddad". The signature is written in black ink and is positioned above the printed name and title.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 108283

Enclosures: Submitted documents

cc: Mr. Jack Osmer
BARRON Risk Management Services, Inc.
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San Antonio, Texas 78228
(w/o enclosures)