



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 23, 1998

Ms. Ann Diamond
Chief of Civil Litigation
Tarrant County Justice Center
401 W. Belknap Street
Fort Worth, Texas 76196-0201

OR98-0235

Dear Ms. Diamond:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111803.

Tarrant County (the "county") received nine written requests for information concerning the crash of a sheriff's department helicopter, which caused the death of two sheriff's deputies. You state that the county has provided a number of responsive documents to the requestors.¹ Included in the information released were nine pages of the incident report, which includes the basic, front page information that is generally public. Gov't Code § 552.108(c); *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). The following information is at issue: the remaining portions of the incident report, videotapes of the accident, worker's compensation files concerning the deceased deputies, a 911 audiotape and radio call information about the accident. You assert that this information is protected from disclosure under sections 552.101, 552.102, 552.103, 552.104, 552.107, 552.108, 552.110, 552.111, 552.115, 552.117, 552.119, and 552.130 of the Government Code.²

We note initially that the first request for information was submitted to the county on October 10, 1997. From notations on the request, it appears that the county responded to the request on October 10, 1997. Your request for a decision from this office is dated October 27, 1997. Section 552.301 provides that a request for a decision from a governmental body to this office is timely received by this office if it is made no later than

¹You state that certain confidential information was deleted from the information disclosed.

²We note that you argue the litigation exception is applicable to the records at issue, and cite to section 552.102 of the Government Code. We assume that you are referring to section 552.103(a) of the Government Code, commonly known as the litigation exception.

the tenth business day after the date the governmental body received the written request for information. Chapter 552 thus imposes a duty on a governmental body seeking an open records decision to submit that request to this office within ten days after receipt of the request for information. Failure to abide by this provision results in the presumption that information is public. Gov't Code § 552.302. Because the county did not request a decision from this office by the tenth business day from the date of the request for information, October 24, 1997, the incident report information is presumed public.³

The presumption that information is public when the deadline is not met can only be overcome by a compelling demonstration that the information at issue should not be made public, such as when information is made confidential by other law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing information was made confidential by other law or affects third party interests). We will address the information in the incident report that you contend is confidential by law.⁴

The incident report contains witness statements, including Texas drivers' license numbers. Section section 552.130 of the Government Code provides:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of the state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Since it does not appear that the drivers' license numbers are subject to release to these requestors under chapter 730, we agree that they are protected from disclosure under section 552.130. The remaining information at issue in the incident report must be released.

³You assert that the tenth business day after receipt of the first request was October 27, 1997. However, since the first request appears to have been received on October 10, 1997, the tenth business day after receipt was October 24, 1997.

⁴Included in the information submitted is a computer-aided dispatch report. You do not indicate whether the originating telephone number and address are confidential under section 772.318 of the Health and Safety Code, as outlined in Open Records Decision No. 649 (1996). We are unable to determine if section 772.318 or any other confidentiality provision in chapter 772 of the Health and Safety Code is applicable, but note that if it is, then the originating telephone number and address are confidential.

You also submitted to this office nine pages from the incident report that shows the redacted portions that were withheld from disclosure. We note that the redacted information is not made confidential by law and thus must be disclosed. Also, included with the incident report submitted to this office was 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 driver's license number was redacted from the accident report form.

The Seventy-fifth Legislature repealed V.T.C.S. article 6701d, and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information. Act of May 29, 1997, 75th Leg., R.S. ch. 1187, 1997 Tex. Sess. Law Serv. 4575 (Vernon), (to be codified at Transp. Code § 550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Ass'n, v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed 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*, 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 Tel. Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of S.B. 1069 is governed by section 47 of article 6701d, V.T.C.S.⁵

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;

⁵Although 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.

- (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.* Thus, under section 47(b)(1)(D) of article 6701d, V.T.C.S., you are required to release the accident report in its entirety to the requestors who have provided two or more pieces of the required information. The driver’s license information should not be redacted from the accident report form.

The county timely raised exceptions against disclosure of the other information at issue. You assert that section 52.108 protects from disclosure the 911 tapes, radio logs, and videotapes.⁶ Section 552.108(a)(1) provides an exception from disclosure for information that is held by a law enforcement agency or prosecutor and that deals with the detection, investigation, or prosecution of crime, when release of such information would interfere with the detection, investigation, or prosecution of crime. You state that the sheriff’s department is conducting an ongoing investigation and that “there is no definitive determination of the cause - either civil or criminal -of the crash at this time.” Based upon your representation that the sheriff’s department is conducting an ongoing investigation and has not ruled out the possibility of criminal conduct, we agree that this information may be withheld from disclosure under section 552.108(a)(1).⁷

Also requested were the worker’s compensation files concerning the deceased deputies. You assert that sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.111, 552.115, 552.117 of the Government Code, and provisions of the Labor Code, protect these files from disclosure. We will address each of your arguments against disclosure of the worker’s compensation files.

Section 402.083(a) makes confidential certain information held by the Texas Worker’s Compensation Commission:

- (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle.

⁶You state that one of the videotapes was taken by a photographer and provided to the county to help with the ongoing investigation. The county submitted the videotape to this office for review. We note that since the county has the videotape and is using it for official purposes, this videotape is subject to the Open Records Act pursuant to section 552.002(a) of the Government Code.

⁷Since section 552.108 is applicable, we need not address your other arguments against disclosure, which include your argument that section 552.104 is applicable.

Section 411.032 provides that employers shall file with the Texas Worker's Compensation Commission reports of on-the-job injuries and occupational diseases, and that the commission must adopt rules and prescribe the form and manner of reports filed by employers. Neither of these provisions make records held by the county confidential.

You assert that some of the information is personal and protected from disclosure under sections 552.102 and 552.101 of the Government Code.⁸ The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in section 552.101 and section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). Because an individual's common-law privacy rights lapse upon the death of the individual, Open Records Decision No. 272 (1981), the files may not be withheld on the basis of the deceased deputies' common-law privacy interests. However, the beneficiaries appear to have a common-law right of privacy in the financial information at issue. Open Records Decision No. 373 (1983) at 3 (financial information about an individual may implicate privacy interests). Thus, you must de-identify the worker's compensation file documents to remove the names of the beneficiaries and any other identifying information about the beneficiaries.

You argue that section 552.103 is applicable to the worker's compensation information. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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. The governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a).

You cite to Open Records Decision No. 272 (1981) for the proposition that the filing of worker's compensation claims shows that litigation is reasonably anticipated. In that decision, there was a disputed worker's compensation claim. This office held that since there was pending litigation, 552.103 was applicable to one portion of the worker's compensation records that concerned "the employee's alleged injuries, the potential injuries of other employees, and information relating to the possible dangers of a particular chemical used by city employees." Open Records Decision No. 272 (1981) at 1. You also assert that litigation is anticipated because of the accident, although you state "it is unclear who might be sued." In this situation, you have not shown that litigation to which the city is a party is reasonably anticipated. Thus, section 552.103 is inapplicable to the records at issue.

⁸We note that some of the documents for which you asserted common-law privacy were filed with a court. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Information filed with a court is generally a matter of public record and may not be withheld on the basis of common-law privacy.

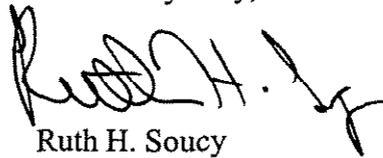
You claim that section 552.107(1) and 552.111 protects the worker's compensation information from disclosure. Section 552.107(1) protects from disclosure information that reveals client confidences to an attorney or that reveals the attorney's legal advice, opinion, and recommendation. *See* Open Records Decision No. 574 (1990). Section 552.111 excepts interagency and intraagency communications from disclosure only to the extent that they contain advice, opinion, or recommendation for use in the governmental body's policymaking process. Open Records Decision No. 615 (1993) at 5. You have not explained the applicability of either section 552.107(1) or section 552.111 to these records.

You assert that section 552.115 protects from disclosure the birth and death records in the worker's compensation file. Birth or death records held by the bureau of vital statistics or local registration officials are excepted from required public disclosure under section 552.115 of the Government Code. Since these records are not held by the bureau of vital statistics or local registration officials, section 552.115 is inapplicable.

You also assert that section 552.117 protects the information at issue from disclosure. Section 552.117 provides that a governmental body must keep private peace officers' the home addresses, home telephone numbers, social security numbers, or information that reveals that the peace officers have family members. The information at issue includes detailed information about the existence of family members and includes the deceased employees' home addresses, home telephone numbers, and social security numbers. This information must all be withheld from disclosure under section 552.117.

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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



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Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 111803

Enclosures: Submitted documents

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