



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1998

Captain Robert Taylor
Amarillo Police Department
200 E. 3rd
Amarillo, Texas 79101-1514

OR98-0284

Dear Captain Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112036.

The Amarillo Police Department (the "department") received a request for information relating to an automobile accident which occurred at 10th and Adams, Amarillo, Texas on August 20th, 1995. You assert that a portion of the requested information, a "Driver's Confidential Accident Report," Form ST-2a, is excepted from disclosure pursuant to section 552.108 of the Government Code and section 47(a) of V.T.C.S. article 6701d. We have considered your arguments and have reviewed the information submitted.

The Seventy-fifth Legislature repealed V.T.C.S. article 6701d, and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information.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.¹

The report you seek to withhold is a "Driver's Confidential Accident Report," Form ST-2, a form evidently devised by the Department of Public Safety and completed by a driver of a motor vehicle involved in an accident not investigated by a law enforcement officer in apparent compliance with section 550.061 of the Transportation Code. Section 47(a) of V.T.C.S. article 6701d reads as follows:

(a) Except as provided by Subsection (b) of this section, all accident reports made as required by this Act or Section 4, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), by persons involved in accidents, by garages, or by peace officers shall be without prejudice to the individual so reporting and shall be privileged and for the confidential use of the Department and agencies of the United States, this state, or local governments of this state having use for the record for accident prevention purposes.

We believe section 47(a) makes confidential the requested report. Although subsection (b) of V.T.C.S. article 6701d provides for the release of peace officer accident reports in certain circumstances, we do not believe subsection (b) is applicable to the report at issue here. Accordingly, we conclude that the department must withhold the requested report from required public disclosure based on Government Code section 552.101² as information deemed confidential by statutory law.³ As you do not raise any exceptions for the remainder of the requested information, it must be released to the requestor.

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.

²Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

³We note that section 550.067 of the Transportation Code provides that a municipality by ordinance may require the operator of a vehicle involved in an accident to file certain accident reports with a designated municipal department and provides for the confidentiality of a report so filed. See Transp. Code § 550.067(a), (b). As you do not raise this provision, we do not consider its applicability to the requested information.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 112036

Enclosures: Submitted documents

cc: Kelly Cavin, CLAS
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(w/o enclosures)