



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 28, 1998

Ms. Jennifer D. Soldano
Associate General Counsel
Texas Department of Transportation
DeWitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR98-1060

Dear Ms. Soldano:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#114884.

The Texas Department of Transportation (the "department") received a request for: a copy of the investigation file pertaining to two truck accidents. The requestor provided the date and site of each accident. You assert that the information at issue is excepted from disclosure pursuant to section 552.103(a) of the Government Code. You state that records responsive to this request were previously submitted in connection with prior requests to this office, ID#s 113949 and 114288. You cite to these previous requests in reaffirming your section 552.103(a) argument, and in reference to a Petition to Perpetuate Testimony that was provided to this office in connection with ID# 113949.

We note that in ID# 114288, you submitted as responsive to the request accident report forms that appeared to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Since you contend that the documents submitted in connection with this prior request are responsive to this request for information, we will address the accident report forms.

The Seventy-fifth Legislature, repealed V.T.C.S. article 6701d, and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information.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

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.* The information is otherwise confidential.

Because the requestor has supplied the site and date of two accidents about which he inquires, you must provide these accident report forms. However, in request ID# 114288, the requestor sought information pertaining to any and all accidents that had occurred at a particular site during the period of construction. We note that to the extent other accident report forms are responsive to the request in ID # 114288, they may not be disclosed.

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.

You also submitted other documents in connection with ID#s 113949 and 114288. We will address your section 552.103(a) argument concerning these documents. Section 552.103(a) exempts from disclosure information:

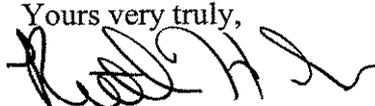
(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To show that litigation is reasonably anticipated, you submitted a Petition to Perpetuate Testimony, which lists the department as a party that may be interested in an anticipated lawsuit against the petitioner, Sunflower Carrier. The petition indicates that the driver of another car who was injured in an accident plans to bring suit against the company that owned the truck. Although litigation against Sunflower Carrier seems reasonably anticipated, you have not shown that the department reasonably anticipates being a party to litigation.

Section 552.103(a) was designed to protect the litigation interests of a governmental body rather than the rights of third parties. Open Records Decision Nos. 588 (1991) at 4; 551 at 3 (1990); 542 at 4 (1990). The exception is not applicable when the anticipated or pending litigation involves only private parties. Open Records Decision No. 575 (1990) at 2. In this situation, the prospect of litigation involving the department is too speculative for section 552.103(a) to be applicable. Open Records Decision No. 518 (1989) at 5 (governmental body must show that litigation involving a specific matter is realistically contemplated). Thus, responsive records other than the accident report forms may not be withheld from disclosure.

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,

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 114884

cc: Mr. K. J. Shumaker
Claim Consultants, Inc.
P.O. Box 1495
Grapevine, Texas 76099