



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 15, 1998

Ms. Christine Mirbagheri  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
Municipal Building  
Dallas, Texas 75201

OR98-2432

Dear Ms. Mirbagheri:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118721.

The Dallas Police Department (the "department") received three requests for information from one requestor. The requests seek any and all police reports, including arrest reports and offense reports, pertaining to one named individual, and also police reports concerning a second named individual, for the period from 1994 to the present. The requestor also asks for an "arrest report on June 12<sup>th</sup> 1998 for two persons arrested at the same time." You assert that the information concerning the named individuals is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.

We first address the request for a specific arrest report. You did not submit to this office an arrest report for June 12, 1998, nor do you indicate that the department has such a responsive arrest report. If the department has a June 12, 1998 arrest report that is responsive to the request, this specific report should be provided to the requestor because the department has raised no objection to disclosure of the requested June 12, 1998 arrest report. However, the department is not obligated to provide information which is not in its possession or which does not exist. Open Records Decision Nos. 452 at 3 (1986) (open records request applies to information in existence when request is received); 362 at 2 (1983) (city does not have to supply information which does not exist).

We next address your argument that section 552.101 protects from disclosure information which might be responsive to the request for compiled police records on the two named individuals.<sup>1</sup> Section 552.101 excepts from disclosure "information considered to be

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<sup>1</sup>We note that a request for a specific arrest or offense report is not the same as a general request for criminal history on a named individual.

confidential by law, either constitutional, statutory, or by judicial decision.” Criminal history information must be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for that aspect of section 552.101 of the Open Records Act by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *See also* Gov’t Code 411.084 (prohibiting release of criminal history information obtained from Department of Public Safety). Under the *Industrial Foundation* case, information must be withheld on common-law privacy grounds only if it is highly intimate or embarrassing *and* is of no legitimate concern to the public.

The privacy interest in criminal history record information has been recognized by federal regulations which limit access to criminal history record information which states obtain from the federal government or other states. *See* 28 C.F.R. § 20; *see also United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (finding criminal history information protected from disclosure under Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act of 1974 (“Privacy Act”), 5 U.S.C. § 552a). Recognition of this privacy interest has been echoed in open records decisions issued by this office. *See* Open Records Decision Nos. 616 (1993), 565 (1990), 216 (1978), 183 (1978), 144 (1976), 127 (1976).<sup>2</sup>

In *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) (hereinafter “*Houston Chronicle*”), the court addressed the availability under the Open Records Act of certain broad categories of documents in the possession of a city police department, including offense reports, police blotters, “show-up” sheets, arrest sheets, and “Personal History and Arrest Records.” The court held that some of this information was available to the public under the Open Records Act, including the police blotters, “show-up” sheets, and offense reports.<sup>3</sup> However, the court also held that “Personal History and Arrest Records” were excepted from required public disclosure. These records primarily contained criminal histories, such as information regarding previous arrests and other data relating to suspected crimes, including the offenses, times of arrest, booking numbers, locations, and arresting officers. *Houston Chronicle* at 179. Such a criminal history record is generally referred to as a “rap sheet.” The court held that release of these documents would constitute an unwarranted invasion of an arrestee’s privacy interests. *Id.* at 188.

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<sup>2</sup>The Code of Federal Regulations defines “criminal history information” as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release.” 28 C.F.R. § 20.3(b). The information at issue here fits this description.

<sup>3</sup>Specific information held to be available in *Houston Chronicle Publishing Co.* includes, among other things, social security number, names, aliases, race, sex, age, occupations, addresses, police department identification numbers, and physical conditions. *See* Open Records Decision No. 127 at 3 (1976); *see also* Open Records Decision Nos. 508 (1988), 394 (1983), 366 (1983).

We agree the department must not release reports in which the two named individuals are suspects or were arrested, because this would be releasing the types of compiled criminal histories made confidential by *Houston Chronicle*. As noted above, federal and state case law regarding an individual's common-law right to privacy expressly prohibits the release of such information.

However, one of the incident reports supplied to this office shows one of the named individuals as a complainant or victim rather than a suspect or arrestee. The incident report is not part of a compiled criminal history on the named individual and therefore is not excepted from disclosure by the common-law right to privacy. We note, however, that the incident report includes a driver's license number and a number that identifies a motor vehicle. These numbers are confidential under section 552.130 of the Government Code and must be redacted prior to release of the report.

The incident report file also includes a motor vehicle accident report form, which is subject to specific access provisions outside of the Open Records Act. 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.<sup>4</sup>

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:

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<sup>4</sup>Although 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.

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(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 this situation, the requestor has provided the name of one person involved in the accident, but no other information concerning the accident. Thus, the report form may not be disclosed in response to this request.

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# 118721

Enclosures: Submitted documents

cc: Mr. James Tillery  
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(w/o enclosures)