



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 26, 1998

Mr. D. Craig Wood
Jeffers & Banack
745 East Mulberry Avenue, Suite 900
San Antonio, Texas 78212-3166

OR98-2497

Dear Mr. Wood:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119194.

Northside Independent School District (the "district") received a request for information pertaining to the district's police officers. With respect to some of the requested information, you indicate that the district either does not have it or has already made it available to the requestor. You express concern, however, that information responsive to other parts of the request -- *i.e.*, information regarding accidents involving district police officers, officer suspensions as a result of accidents, disciplinary actions taken, records produced at a board of trustees hearing regarding a named officer, and records pertaining to accidents and disciplinary actions involving another named officer -- may contain confidential information. You submitted representative samples of the information at issue.¹

We have considered your arguments and reviewed the information you submitted. Included in this information are accident reports ("DPS reports") that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code §§ 550.063, 550.064 (accident reports on forms approved by Department of Public Safety). As discussed below, however, the release of such DPS reports is currently governed by provisions of former V.T.C.S. article 6701d rather than provisions of the Transportation Code.

¹In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The Seventy- fifth Legislature repealed V.T.C.S. article 6701d, and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information.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), (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.²

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 employing a peace officer who made an accident report “is required to release” a copy of an accident report to a person who

²Although 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.

provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the district with the date or location of the accident. Thus, the DPS report completed by a district police officer should be withheld.

The information you submitted also includes a DPS report which appears to have been completed by a police officer employed by a different governmental body, "San Antonio." This accident report is confidential under subsection (a) of section 47, which provides that "all accident reports as required by this Act... by peace officers 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...." We find no exceptions in section 47 or elsewhere permitting the release of this DPS report to the requestor.

Also included in the material you submitted as responsive to the request are reports of accidents using "Northside Independent School District Police Department" forms ("district reports"). We do not consider release of district reports to be subject to chapter 550 of the Transportation Code or to the provisions of article 6701d, § 47. *See* former article 6701d, §§ 44 and 45 (use of DPS report forms for reports under article). We note, however, that the district reports contain information subject to Government Code sections 552.117 and 552.130.

Section 552.117 requires withholding of a peace officer's home address, telephone number, social security number, and information whether he has family members. We have marked the information on the district forms which must be redacted pursuant to section 552.117.

Section 552.130 provides in relevant part as follows:

(a) Information is excepted from [public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked the portions of the district forms which must be redacted pursuant to section 552.130. Except for the section 552.117 and 552.130 redactions we have indicated, the district reports must be released.

The remaining document in the information you submitted appears to be a list of accidents involving district officers during the period from May 31, 1992, to June 11, 1998. We find no exception to disclosure for this list. It must be released.

We note that you expressed concern whether the information at issue here is protected in whole or in part by chapter 730 of the Transportation Code, which prohibits disclosure of “personal information about any person obtained by [an] agency in connection with a motor vehicle record.” *Id.* § 730.004. Section 730.003(4) provides that “‘motor vehicle record’ means a record that pertains to a motor vehicle operator’s or driver’s license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document.”

The chapter 730 provisions were added by the same bill which added the provisions of section 550.065, discussed above. Act of May 29, 1997, 75th Leg., R.S. ch. 1187, § 1, 1997 Tex. Sess. Law Serv. 4575. The same court which enjoined the enforcement of section 550.065, as discussed above, also addressed the chapter 730 provisions as follows:

The Court finds that the Department of Public Safety has provided the notice required under Section 730.008 and therefore that motor vehicle records under [chapter 730] are available to the public unless a member of the public has requested that an agency limit disclosure pursuant to Section 730.008 and/or Section 730.007(2)(a)(K)” [sic].³

Texas Daily Newspaper Ass’n, v. Morales, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). Section 730.008 provides that an agency may disclose personal information “obtained by an agency in connection with a motor vehicle record” if the Department of Public Safety has indicated “on forms for issuance or renewal of an operator’s license or driver’s license, registration title, or identification document, notice that personal information may be disclosed” and provided an opportunity on the form for a person who is the subject of the record to prohibit disclosure. The other referenced provision, section 730.007(a)(2)(K),⁴ requires that agencies implement procedures to provide an opportunity for persons to opt out and prohibit use of such personal information for “bulk distribution for surveys, marketing, or solicitations.”

In our opinion the court’s treatment of “motor vehicle records” under chapter 730 reflects a narrow reading of that term such that it would not include the accident reports and other information you submitted. We do not believe the court would have ruled that a “motor vehicle record” under chapter 730 is open to the public unless the person who is the subject of the record had opted on forms for issuance or renewal of an operator’s license or driver’s license, registration title, or identification document to withhold them, had the court not considered that “motor vehicle records” under the chapter were limited to such licenses, permits, titles and identification documents. If it had intended to include accident reports and the other sort of information submitted here as “motor vehicle records” under the chapter, it would have been anomalous for the court to hold that such records were open absent the

³By “Section 730.007(2)(a)(K)” the court evidently meant to refer to section 730.007(a)(2)(K).

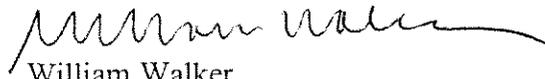
⁴See footnote 3

subject's opting out while in the same order reinstating the article 6701d restrictions on the release of such material. Therefore, we do not believe that chapter 730 restricts release of the information at issue here.

In summary, you must withhold the DPS accident report forms in their entirety under article 6701d, release the district accident report forms with the indicated section 552.117 and 552.130 redactions, and release the list of accidents involving district peace officers.

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,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 119194

Enclosures: Submitted documents

cc: Ms. Cynthia Lopez Beverage
Small, Craig & Werkenthin
300 Current Street, Suite 1880
San Antonio, Texas 78208-3738
(w/o enclosures)