



March 25, 1999

Lieutenant Bill Kral  
Amarillo Police Department  
200 S. E. 3<sup>rd</sup>  
Amarillo, Texas 79101-1515

OR99-0836

Dear Lieutenant Kral:

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# 123193.

The Amarillo Police Department (the “department”) received an open records request for all of its records pertaining to a named individual. You have submitted to this office as responsive to the request various incident reports and an accident report. You contend the requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.108(a)(2) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” After reviewing the records at issue, we conclude that you have met your burden of establishing the applicability of section 552.108(a)(2) with regard to the requested incident reports and that most of the information contained in these reports therefore may be withheld.

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Because you have raised no other applicable exception to disclosure, the department must release these types of information from the incident reports to the requestor in accordance with *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), with the following exceptions.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information

coming within the common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

We note that two of the incident reports list “suicide attempt” as the offense. This office has previously recognized that information might implicate an individual’s common-law privacy interests if it relates, for example, to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures or emotional/ mental distress. *See* Open Records Decision No. 370 (1983); *see also* Open Records Decision Nos. 343 (1982), 262 (1980). In Open Records Decision No. 422 (1984), this office concluded that the fact that an individual attempted to commit suicide was a strong indication that the individual suffered from emotional or mental distress, and therefore implicated the individual’s common-law privacy interests. We have marked the “front page” information in these two incident reports that the department must withhold to protect the privacy interests of the complainants.

As noted above, section 552.101 of the Government Code also protects information made confidential by statutory law. One of the incident reports at issue pertains to a juvenile suspect. Section 58.007(c) of the Family Code provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

- (1) kept separate from adult files and records; and
- (2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Because Incident Report No. 98-88517 pertains to an offense allegedly committed by a juvenile, we conclude that the department must withhold this report in its entirety pursuant to section 58.007(c) of the Family Code.

As noted above, included among the documents you seek to withhold is an accident report that we assume to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). You argue that this accident report is confidential under the Transportation Code.

The Seventy-Fifth Legislature, repealed, codified, and amended V.T.C.S. article 6701d, concerning the disclosure of accident report information. Act of May 29, 1997, S.B. 1069, §13, 75th Leg., R.S. (to be codified at Transp. Code §550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of section 13 of SB 1069. *Texas Daily Newspaper Association v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Aug. 29, 1997) (order granting 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 Telephone Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of SB 1069 is governed by section 47 of article 6701d, V.T.C.S.<sup>1</sup>

Section 47(b)(1) provides that:

The Department [of Public Safety] 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.

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<sup>1</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.

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 instance, the requestor has not provided the department with the required information. Thus, the department must withhold the accident report under section 47(b)(1)(D) of article 6701d, V.T.C.S.

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.

Sincerely,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/RWP/ch

Ref.: ID# 123193

Enclosures: Submitted documents

cc: Ms. Michelle Martinez  
Court Appointed Special Advocates  
Chaves County Children's Court  
P.O. Box 2131  
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(w/o enclosures)