



September 23, 1999

Ms. Monica L. Strickland
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR99-2685

Dear Ms. Strickland:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127519.

The City of Midland (the "city") received two written requests from a former city police officer. One request seeks "the document from which I was evaluated upon and terminated for, while on probationary period as a police officer." The other request seeks "the two previous letters, one I wrote, the other Attorney Hirsch wrote. Requesting the same document. (The document that I was evaluated and terminated upon)." You interpret these requests as seeking the requestor's entire personnel file. While we question this expansive interpretation of the requests, we will nevertheless determine whether the city must release to the requestor the documents you submitted to this office as Exhibits B, C, and D. You contend that the records at issue are excepted from required public disclosure pursuant to sections 552.101, 552.103, 552.111, 552.117, 552.119, and 552.130 of the Government Code.¹

¹You characterize the documents submitted to this office as a representative sample of the requestor's personnel file. We note, however, that you have raised exceptions to disclosure for records not submitted to this office. In reaching our conclusion here, 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). 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. Further, we do not address the applicability of exceptions to documents not currently before us, except to note that the requestor may have a special right of access to those documents pursuant to section 552.023 of the Government Code or other statutory law.

Because section 552.103 of the Government Code is the most inclusive exception that you raised, we will discuss it first. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You contend that section 552.103 applies to the information at issue because the requestor filed a civil rights complaint with the Equal Employment Opportunity Commission ("EEOC") under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, alleging racial discrimination by the city. You have provided this office with a copy of that complaint. The filing of such a complaint normally constitutes evidence that the likelihood of litigation is more than mere conjecture. *See* Open Records Decision No. 386 (1983). In this instance, however, the EEOC has issued a "right to sue" letter to the requestor, stating that a lawsuit must be filed within ninety days of receipt of the letter or "your right to sue based on this charge will be lost." More than ninety days have elapsed since the issuance of the EEOC letter, but you have not apprized this office of any change of status regarding this issue since you first requested a decision from this office. *See* Open Records Decision No. 638 (1996). Consequently, we conclude that you have not met your burden of demonstrating that litigation regarding the requestor's termination is reasonably anticipated. The city may not withhold any of the information at issue pursuant to section 552.103.

We now address your other arguments for withholding particular documents. You contend that certain records constitute "criminal history information reports" that are made confidential under chapter 411 of the Government Code and federal regulation. After reviewing the documents you identified, which are entitled "Unit History," it is not apparent to this office that these records constitute criminal history information. Rather, these documents appear to merely reflect the daily activities of particular patrol units. The release of these documents is not governed by the statutes that you raise. Consequently, these documents must be released, with the following exceptions.

The "Unit History" reports contain various drivers' license numbers and vehicle registration information, including license plate numbers. Section 552.130(a)(1) of the Government Code requires that the city withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Additionally, section 552.130(a)(2) requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." We agree that the information you have marked in the Unit History reports must be withheld from the public pursuant to section

552.130(a) of the Government Code. The remaining information in these reports must be released to the requestor.

You also contend that various individuals' social security numbers are excepted from public disclosure. A social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 (1994).

It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the city should ensure that these numbers were not obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

On the other hand, among the social security numbers at issue are those of city police officers. Section 552.117(2) of the Government Code makes confidential, *inter alia*, the social security number of a peace officer as defined by article 2.12, Code of Criminal Procedure. Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). The city must withhold all such information from the public pursuant to section 552.117(2).²

Finally, we note that among the documents at issue are several accident reports. 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., 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.

²We note, however, that the requestor has a special right of access to his own social security number, as well as any other information protected by section 552.117(2), pursuant to section 552.023 of the Government Code.

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.³

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.

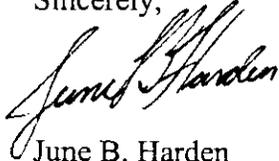
V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). Under this provision, a law enforcement agency “is required to release” a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the city with the required information. Thus, the city must withhold the accident reports under section 47(b)(1)(D) of article 6701d.

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

³Although 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. Gen. Laws 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. Gen. Laws 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. Gen. Laws 4413, 4414.

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,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is written in a cursive style with a large initial "J" and "H".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/nc

Ref.: ID# 127519

Encl. Submitted documents