



December 27, 1999

Mr. Duncan R. Fox  
Assistant Chief  
Legal Services  
Texas Department of Public Safety  
Box 4087  
Austin, Texas 78773-0001

OR99-3765

Dear Mr. Fox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130692.

The Department of Public Safety (the "department") received a request for "the entire investigative file" concerning an accident which occurred at Loop 336 at FM 3083 in Conroe, Texas on October 2, 1999. You have provided for our review a representative sample of information that is responsive to the request.<sup>1</sup> You assert the requested information is excepted from public disclosure under sections 552.103 and 552.108 of the Government Code. We have reviewed the information you have submitted and considered the exceptions you assert.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within *fifteen business days* of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) *a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents*. Gov't Code § 552.301(e) (emphasis added). The department received the request for information on

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<sup>1</sup>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 Nos. 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.

October 11, 1999. You did not, however, submit to this office representative samples of the responsive information and the request letter until November 3, 1999, more than fifteen business days after the department's receipt of the request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to timely submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Accordingly, except for information made confidential by another source of law, you must release the requested information.

The submitted documents contain motor vehicle information such as driver's license numbers, license plate numbers, vehicle registration information, and vehicle identification numbers. Section 552.130 of the Public Information Act governs the release and use of information obtained from motor vehicle records. Section 552.130 provides:

(a) Information is excepted from [required 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;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. The submitted documents contain the types of information described by section 552.130(a), and the department must withhold this information under section 552.130.<sup>2</sup>

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<sup>2</sup>Section 552.130(b) provides for release of the information if authorized under Chapter 730 of the Transportation Code. We find chapter 730 does not apply here. The stated purpose of chapter 730 is "to implement 18 U.S.C. Chapter 123 and to protect the interest of an individual in the individual's personal

The submitted document also contain social security numbers. A social security number or “related record” may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

The submitted information also includes an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). We believe access to this information is governed by provisions outside the Public Information 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. Gen. Laws 4575, 4582-4583 (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 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. *Janus Films, Inc. v. City of Fort Worth*, 163 Tex. 616, 617, 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>3</sup> Section 47(b)(1) provides that:

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privacy by prohibiting the disclosure and use of information *contained in motor vehicle records*, except as authorized by the individual or by law.” Transp Code § 730.002 (emphasis added). The information at issue is not contained in motor vehicle records.

<sup>3</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. 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

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, the department “is required to release” a copy of an accident report to a person who provides the department with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the department with the statutorily required information. Therefore, you are required to release a copy of the accident report in its entirety to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

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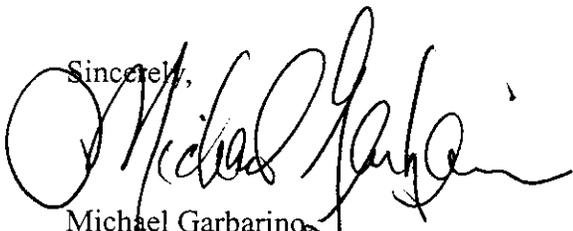
a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. Gov’t Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S. is the existing law regarding 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.

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/jc

Ref: ID# 130692

Encl. Submitted documents

cc: Mr. Rick Dail  
Claims Department  
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Houston, Texas 77014  
(w/o enclosures)