



July 5, 2000

Ms. Teresa Coomes
City of Grand Prairie
801 Conover Drive
Grand Prairie, Texas 75051

OR2000-2515

Dear Ms. Coomes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136539.

The City of Grand Prairie (the "city") received a request for "[a]ny and all accident reports located at the intersection of 800 Avenue J. East and RRXING, 848 977Y, Grand Prairie for the past three (3) years." You state that a "list of accidents that occurred at the location has been provided to the requestor[.]"¹ You assert that the "accident reports" that are responsive to the request are excepted from disclosure under section 550.065 of the Transportation Code.

We note at the outset that, although you state in your correspondence to this office dated April 19, 2000 that you have enclosed for our review "accident reports that are kept on file[.]" there were no accident reports enclosed. You have not otherwise submitted the "accident reports" to which you refer to this office for review. Section 552.301 of the Government Code requires that a governmental body submit to this office, among other information and no later than the fifteenth business day after the date of receiving the request, a copy of the specific information requested or representative samples if a voluminous amount was requested. *See* Gov't Code § 552.301(e)(1)(D). To date, the only responsive information that this office has received is the list that you indicate was released to the

¹Because you state you have released this information to the requestor, we assume that the list is responsive to the request. In connection with your request for a decision, you have submitted the list to this office. However, based on your representation that the list has been released to the requestor, we assume that the list was submitted to this office solely for informational purposes and that you are not asserting that the list is excepted from required public disclosure. This decision accordingly does not address the issue of whether the city must release the list to the requestor.

requestor. Thus, the city failed to comply with section 552.301(e)(1)(D) with respect to any other information that is responsive to the request and that the city seeks to withhold.

Section 552.302 of the Government Code provides that if a governmental body does not request a decision of this office as provided by section 552.301, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. Thus, pursuant to section 552.302, the information that is responsive to the present request is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

As noted above, you assert that the "accident reports" that are responsive to the request are not subject to release pursuant to section 550.065 of the Transportation Code. The Seventy-fifth Legislature repealed article 6701d and amended section 550.065 of the Transportation Code concerning the disclosure of certain accident report information. *See* Transp. Code § 550.065. However, a Travis County district court has issued a permanent 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., April 26, 2000). The district court has declared that the law in effect prior to the passage of S.B. 1069 now governs and remains unaffected by the permanent injunction. The law in effect prior to the passage of S.B. 1069 was section 47 of article 6701d, V.T.C.S.²

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 [of Public Safety] or the law enforcement agency with two or more of the following:

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. 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. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414. *See also* Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 30.125, 1997 Tex. Gen. Laws 327, 648.

- (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). You explain that because the requestor has not provided the city with two or more of the above-stated pieces of information, the “accident reports” are not subject to release to the requestor.³ However, we note that the list you have provided this office appears to indicate that responsive information exists in the form of offense or incident reports. Such reports do not constitute information that is subject to the above-cited provision. Because you have submitted no responsive information for our review other than the list that you have released to the requestor, we are unable to ascertain whether the “accident reports” to which you refer constitute accident report forms completed pursuant to chapter 550 of the Transportation Code. Thus, you have not demonstrated the applicability of section 47 of article 6701d, V.T.C.S. to the information that you seek to withhold. Because you have not otherwise demonstrated a compelling reason to withhold this information from the requestor, we conclude that you must release in its entirety the information that is responsive to the request.⁴

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).

³You also claim that the accident reports “are not part of” the Public Information Act (the “Act”). While we agree that the Act does not govern the release of accident report forms completed pursuant to chapter 550 of the Transportation Code, because you have not submitted the information, we cannot verify whether the accident reports to which you refer constitute such accident report forms.

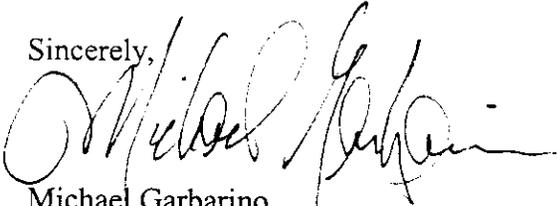
⁴You have not submitted the information, so we have no basis for finding it confidential. Thus, we have no choice but to order the information released under section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this decision in court as outlined below. *See also* Gov’t Code § 552.352.

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; 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/pr

Ref: ID# 136539

Encl. Submitted documents

cc: Mr. Tom Carse, P.C.
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(w/o enclosures)