



November 21, 2000

Mr. Charles M. Allen, II
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2000-4484

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 141104.

The Richardson Police Department (the "department") received a request for information pertaining to an automobile accident. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Initially, we note that the submitted records contain a Texas peace officer's accident report which appears to have been prepared pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Access to an accident report is governed by law outside the Act. The Seventy-fourth Legislature amended section 47 of article 6701d, Vernon's Texas Civil Statutes, to provide for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific location of the accident. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414. In other legislation, the Seventy-fourth Legislature repealed and codified article 6701d as section 550.065 of the Transportation Code without substantive change. *See* Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25, 1995 Tex. Gen. Laws 1025, 1870-71.¹ In section 13 of Senate Bill No. 1069, the Seventy-fifth Legislature amended section 550.065 of the Transportation Code to provide for release of accident reports under

¹Because the repeal of a statute by a code does not affect an amendment of that statute by the same legislature that enacted the code, the amendment of section 47 of article 6701d, V.T.C.S., is preserved and given effect as part of the code provision. *See* Gov't Code § 311.031(c).

specific circumstances. *See* Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582-83 (current version at Transp. Code § 550.065). That same legislation also repealed section 47 of article 6701d, V.T.C.S. *See id.* § 16(b), 1997 Tex. Gen. Laws 4575, 4583.

However, a Travis County district court has issued a permanent injunction precluding the enforcement of the amendment of section 550.065 of the Transportation Code that was enacted by section 13 of Senate Bill No. 1069. *See Texas Daily Newspaper Ass'n v. Cornyn*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., April 26, 2000). The district court has determined that the law in effect prior to the passage of Senate Bill No. 1069 now governs and remains unaffected by the permanent injunction. We have determined that the law in effect prior to the passage of Senate Bill No. 1069 was section 47 of article 6701d, V.T.C.S.²

Subsection (a) of section 47 provides that “[e]xcept as provided by Subsection (b) of this section, all accident reports . . . [are] privileged and for the confidential use of the Department [of Public Safety] and agencies . . . having use for the records for accident prevention purposes.” V.T.C.S. art. 6701d, § 47(a). Subsection (b) of section 47 provides in relevant part:

(1) 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

²In 1997, the Seventy-fifth Legislature enacted Senate Bill No. 898, amending section 550.065 of the Transportation Code to conform to section 47 of article 6701d, as amended by the Seventy-fourth Legislature, and repealing article 6701d. *See* Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 30.125, 1997 Tex. Gen. Laws 327, 648-49. Although the Seventy-fifth Legislature enacted Senate Bill No. 898 prior to the passage of Senate Bill No. 1069, Senate Bill No. 898 was not made effective until September 1, 1997. *See id.*, § 33.01, 1997 Tex. Gen. Laws 327, 712. Further, Senate Bill No. 1069 expressly provides that to the extent of any conflict, Senate Bill No. 1069 prevails over another act of the Seventy-fifth Legislature. *See* Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 16(c), 1997 Tex. Gen. Laws 4575, 4583. If irreconcilable amendments are enacted by the same session of the same legislature, the latest in time prevails. *See* Gov't Code § 311.025(b). Thus, because Senate Bill No. 898 never became effective, and later amendments prevail, we conclude that section 47 of article 6701d, V.T.C.S., was the law in effect prior to the passage of Senate Bill No. 1069 regarding the availability of accident report information, rather than section 550.065 of the Transportation Code as amended by Senate Bill No. 898.

(iii) the specific location of the accident[.]

V.T.C.S. art. 6701d, § 47(b)(1)(D); *see* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413.³ Thus, under section 47(b)(1)(D), a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report to a person who provides the law enforcement agency with at least two of the three specified items of information. In this instance, the requestor has supplied each of the three required items of information. Therefore, the requestor is entitled to a copy of the accident report under section 47(b)(1)(D) of article 6701d, Vernon's Texas Civil Statutes.

The submitted information also includes records relating to grand jury proceedings. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records within the actual or constructive possession of a grand jury are not subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the Act. *See* ORD 513 at 3. Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception to disclosure is applicable. *Id.* Thus, to the extent that any of the submitted information relating to grand jury proceedings is in the custody of the department as agent of the grand jury, such information is in the constructive possession of the grand jury and therefore is not subject to disclosure under the Act.

We also note that the submitted information includes emergency medical services ("EMS") records that are confidential under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, section 552.101 encompasses statutory confidentiality provisions. Section 773.091 of the Health and Safety Code provides in relevant part:

- (a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision

³We note that the text of amended section 47 of article 6701d, V.T.C.S., is not found either in the Vernon's Revised Civil Statutes or in the Transportation Code. It is published, however, in the 1995 General and Special Laws of the Seventy-fourth Legislature at chapter 894, section 1.

that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(a), (b). Section 773.091 further provides, however, that

[t]he privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(g). We have marked the EMS records that are confidential under section 773.091. You have not informed us that any exception to confidentiality under the Emergency Medical Services Act, chapter 773 of the Health and Safety Code, is applicable here. *See* Health & Safety Code § 773.092. We therefore conclude that, except for the information specified by section 773.091(g), the contents of the submitted EMS records are confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

You claim that the rest of the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108, the “law enforcement exception,” provides in relevant part that “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if ... release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming an exception to disclosure under section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In this instance, you inform us that the information in question pertains to a pending case. Based on that representation and our review of the information in question, we find that its release would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1); *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) (court delineates law enforcement interests that are present in active cases).

We note, however, that section 552.108 does not except from public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The department must release the kind of information that is considered to be basic front-page offense and arrest report information, including a detailed description of the offense, even if that information does not actually appear on the front page of a police report. *See Houston*

Chronicle, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The rest of the information in question is excepted from disclosure under section 552.108(a)(1).

In summary, the responsive peace officer's accident report must be released to the requestor in accordance with section 47(b)(1)(D) of article 6701d, Vernon's Texas Civil Statutes. Information that is in the custody of the department as agent of the grand jury is in the constructive possession of the grand jury and is not subject to disclosure under the Act. Emergency medical services ("EMS") records are confidential under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. The rest of the submitted information is excepted from disclosure under section 552.108(a)(1), with the exception of the basic information that must be released in accordance with section 552.108(c).

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).

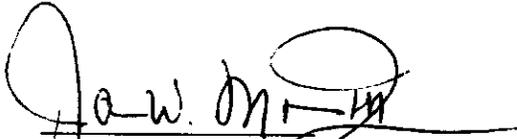
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 141104

Encl: Submitted documents

cc: Mr. David K. Wilson
David K. Wilson & Associates
421 North Crockett
Sherman, Texas 75090
(w/o enclosures)