



August 8, 2002

Ms. Sandra Silva-Zellers  
Supervisor  
Central Records Division  
City of McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78502-0220

OR2002-4380

Dear Ms. Silva-Zellers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166887.

The City of McAllen Police Department (the “department”) received a request for “records of all calls answered” by the department pertaining to “traffic accidents only” for the dates of May 28 and 29, 2002, to include “a brief description of the nature or reason for the call and the specific location for each location recorded.” We understand you to assert that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This

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<sup>1</sup>You state that the information contained in the submitted Exhibit 2 is an “example.” We assume this means it is a representative sample of the responsive information that the department seeks to withhold. See Gov’t Code § 552.301(e)(1)(D) (governmental body must submit to attorney general “a copy of the specific information requested” or representative samples of that information). We further assume that the submitted “example” is truly representative of the requested records that the department seeks to withhold. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

exception thus encompasses information that is confidential by statute. You assert the applicability of section 550.065 of the Transportation Code, which states in pertinent part:

(a) This section applies only to information that is held by [the Texas Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under this chapter or Section 601.004 [of the Transportation Code].

(b) Except as provided by Subsection (c), the information is privileged and for confidential use of:

(1) the [Texas Department of Public Safety]; and

(2) an agency of the United States, this state, or a local government of this state that has use for the information for accident prevention purposes.

Transp. Code § 550.065(a)-(b). By its plain language, this provision “applies only to” certain information reported to the Texas Department of Public Safety (“DPS”) under either chapter 550 of the Transportation Code or section 601.004 of the Transportation Code. *Id.* Although the requested information evidently pertains to vehicular accidents, none of the information submitted as responsive to the request consists of a report to DPS. Similarly, we have no indication that any of this information is also contained in a record that was reported to DPS. *See id.* §§ 550.061(a), 550.062(a), 601.004(a) (requiring in each instance that a written report be submitted to DPS, but only if the motor vehicle accident resulted in injury to or death of a person or apparent property damage of \$1,000.00 or more). We shall nevertheless address your claim of confidentiality, proceeding on the assumption that at least a portion of the submitted information may also be contained in an accident report form, promulgated by DPS, that is subject to section 550.065. *See id.* §§ 550.063, 550.064, 601.004(c) (requiring in each instance that the report to DPS be made on a form promulgated by DPS).

We thus understand your assertion to be that because some of the information in the submitted records may also happen to be contained in one or more accident report forms, and because those accident report forms constitute records prepared in accordance with chapter 550 or section 601.004 that are thereby subject to section 550.065, the submitted information is itself subject to section 550.065. We disagree.

Initially, we note that as amended by the Seventy-fifth Legislature in section 13 of Senate Bill No. 1069, a prior version of the above-quoted section 550.065(a) stated:

(a) This section applies only to information that is held by the [Texas Department of Public Safety] or another governmental entity and relates to a motor vehicle accident, including:

- (1) information reported under this chapter, Section 601.004, or Chapter 772, Health and Safety Code;
- (2) *information contained in a dispatch log*, towing record, or a record of a 9-1-1 service provider; and
- (3) *the part of any other record* that includes information relating to the date of the accident, the name of any person involved in the accident, or the specific location of the accident.

*See* Act of May 29, 1997, 75<sup>th</sup> Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582. (emphasis added). By its plain language, quoted above, this prior version of section 550.065 ostensibly applied not only to information reported to DPS under chapter 550 or section 601.004, but also to certain motor vehicle accident information “contained in a dispatch log” as well as certain portions of such information included in “any other record[.]” This prior version of section 550.065, however, was ruled unconstitutional and its enforcement permanently enjoined. *See Texas Daily Newspaper Ass’n v. Cornyn*, No. 97-08930 (345th Dist. Ct., Travis County, Tex.) (Final Judgment and Permanent Injunction entered January 24, 2001). Among other things, in support of its decision, the court observed that the prior version of section 550.065 “impose[d] a wholesale ban on information that has traditionally been public[.]” *See id.* (Findings of Fact and Conclusions of Law entered January 24, 2001).

The Seventy-seventh Legislature enacted the present language of section 550.065(a) in House Bill No. 1544. *See* Act of May 25, 2001, 77<sup>th</sup> Leg., R.S., ch. 1032, § 5, 2001 Tex. Gen. Laws 2281, 2282. The legislative history of this enactment reflects that the legislature intended to correct the deficiencies that caused the court to invalidate the previous version of the statute. Hearings on Tex. H.B. 1544 before the Senate Committee on State Affairs, 77th Leg. R.S. (May 10, 2001); *see also* Open Records Decision No. 643 at 2 (1996) (citing *Acker v. Texas Water Comm’n*, 790 S.W.2d 299 (Tex. 1990)) (legislature is presumed to have enacted a statute with complete knowledge of and reference to existing law). Moreover, there is no legislative indication that the current version of section 550.065 was intended to encompass any records other than those prepared in accordance with chapter 550 or section 601.004 of the Transportation Code. Hearings on Tex. H.B. 1544; *see also* Open Records Decision No. 643 at 2-3 (citing *Buckner Glass & Mirror, Inc. v. T.A. Pritchard Co.*, 697 S.W.2d 712 (Tex. App.--Corpus Christi 1985, no writ) (when legislature amends a law, it is presumed to have intended to change the law)).

As noted above, we have no indication that the submitted sample, or indeed any of the records responsive to the request, were prepared in accordance with chapter 550 or section 601.004 of the Transportation Code. We thus conclude that section 550.065 of the Transportation Code is inapplicable to the requested information. As you have asserted no other basis for withholding any of the information at issue, we further conclude that the department must release the requested information in its entirety.

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 Hadassah Schloss at the Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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/seg

Ref: ID# 166887

Enc. Submitted documents

c: Mr. Doug Friedman  
c/o Ms. Yvonne Garcia  
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