



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2004

Chief Don Hatcher
Leander Police Department
P.O. Box 319
Leander, Texas 78646-0319

OR2004-5803

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205177.

The Leander Police Department (the "department") received a request for the "[c]alls for [s]ervice log for the day(s) of May 3, 2004." In addition, the requestor states that "[t]his request will be made on a daily basis and includes drivers' name, date of accident and location of accident." You claim that the requested information is confidential pursuant to section 550.065 of the Transportation Code. We have considered your arguments and have reviewed the submitted information.

Initially, we note that, in addition to requesting the calls for service log for a particular day, the requestor appears to be making a standing request for particular information to be provided to the requestor on a regular basis. It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See Gov't Code §§ 552.002, .021, .227, .351.* The Act does not require a governmental body to prepare new information in response to a request. *See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990).* Consequently, a governmental body is not required to comply with a standing request to supply information on a periodic basis as such information is prepared in the future. *See Attorney General Opinion JM-48 at 2 (1983); see also Open Records Decision Nos. 465 at 1 (1987), 476 at 1 (1987).*

Next, we address your argument against disclosure. You argue that the submitted documents contain information that is confidential under section 550.065(b) of the Transportation Code. Section 550.065 provides 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). The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Texas Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.*

The information at issue consists of a list of calls for service for a particular day. You argue that,

although the request is not for the 'ST-3' official report . . . the privilege and confidential provisions of § 550.065 apply to agency "call for service" reports or logs containing such gleanable traffic accident information. The applicability of this statute is salient in that the specific language states, "This section applies only to information that is held by the department or another governmental entity and relates to a motor accident reported under this chapter [§550] or Section 601.004."

We disagree with your interpretation of section 550.065. We note that as amended by the Seventy-fifth Legislature in section 13 of Senate Bill No. 1069, section 550.065(a) previously provided as follows:

(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, 75th Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582. The prior version of section 550.065 was held to be unconstitutional, however, and its enforcement was permanently enjoined. See Tex. Daily Newspaper Ass'n v. Cornyn, No. 97-08930 (345th Dist. Ct., Travis County, Tex.) (Final Judgment and Permanent Injunction entered Jan. 24, 2001). Among other things, the court concluded 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 Jan. 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, 77th Leg., R.S., ch. 1032, § 5, 2001 Tex. Gen. Laws 2281, 2282. The legislative history of House Bill No. 1544 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. Tex. 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). Furthermore, there is no legislative indication that the current 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).*

Accordingly, because the submitted list of calls for service does not constitute an accident report form completed pursuant to chapter 550 or section 601.004 of the Transportation

Code, we conclude that the list is not made confidential by section 550.065.¹ Thus, as you make no other arguments against disclosure, the department must release the submitted information to the requestor, with the following exception.

We note that the submitted documents contain information pertaining to juvenile conduct. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). The information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the information we have marked within the submitted records is confidential pursuant to section 58.007(c) of the Family Code. You must withhold this information from the requestor under section 552.101 of the Government Code.²

¹We note that you also state that it is the department's belief that the intent of the requestor is to "glean traffic accident/collision information from [the] department's 'calls for service' database. . . . Receiving such information would enable requestors to obtain criteria required for requests under Texas Transportation Code § 550, circumventing the statute's intent." The Act prohibits a governmental body from inquiring into a requestor's motives for obtaining information. Gov't Code § 552.222; Open Records Decision Nos. 542 (1990), 508 (1988). Thus, in determining whether information must be disclosed under the Act, we do not consider the requestor's motives.

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

To summarize, the information we have marked within the submitted records must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The remaining submitted information must be released 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; 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 Dep't of Pub. 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,

A handwritten signature in black ink that reads "Michael A. Pearle". The signature is written in a cursive style with a large initial "M".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 205177

Enc. Submitted documents

cc: Ms. Adreine Anderson
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(w/o enclosures)