



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2008

Mr. Lawrence G. Provins
Assistant City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581-5416

OR2008-08054

Dear Mr. Provins:

~~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# 312651.

The City of Pearland (the "city") received a request for all calls for service and automobile accident reports for a specified time period.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹We note that the city asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

²We 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.

Code § 552.101. This exception encompasses information that another statute makes confidential. Section 550.065 of the Transportation Code provides in relevant part:

(a) This section applies only to information that is held by the [Texas Department of Transportation] 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 Transportation]; 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). Section 550.065(c)(4) provides 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 id.* § 550.065(c)(4). Under section 550.065(c)(4), the Texas Department of Transportation 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 of the items of information specified by the statute. *Id.*

You state that the information at issue consists of both an accident report completed pursuant to chapter 550 of the Transportation Code and a Call for Service Log. In the situation at hand, the requestor has not provided the city with two of the three pieces of information for the submitted accident report. Thus, you must withhold the submitted accident report from disclosure under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.³

You assert that the Call for Service Log is also subject to section 550.065 because this information was derived from accident report forms. 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:

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

- (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 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, 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 January 24, 2001).

The Seventy-seventh Legislature modified the 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. 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). Furthermore, there is no legislative indication that the modified 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 requested Call for Service Log does not constitute an accident report form completed pursuant to chapter 550 or section 601.004 of the Transportation Code, we conclude that this information is not made confidential by section 550.065. Thus, it is not excepted from disclosure under section 552.101 of the Government Code.

We also understand you to assert that the Call for Service Log should be withheld because the requestor will use this information to circumvent the protections provided by section 550.065 of the Transportation Code. We note that section 552.204 of the Government Code provides that a governmental body is not responsible for a requestor's use of information released pursuant to the Act. *See id.* § 552.204(a). As you raise no other

exceptions to disclosure of this information, the Call for Service Log must be released to the requestor.

In summary, the city must withhold the submitted accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The remaining submitted information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

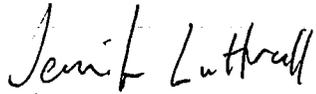
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge 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 Office of the Attorney General 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 312651

Enc. Submitted documents

c: Ms. Cynthia Aquirre
12727 Old Pine Lane
Houston, Texas 77015
(w/o enclosures)