



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

December 22, 1992

Mr. John S. Schneider, Jr.
First Assistant City Attorney
City of Pasadena
P. O. Box 672
Pasadena, Texas 77501

OR92-698

Dear Mr. Schneider:

Pursuant to the Texas Open Records Act, V.T.C.S. article 6252-17a, the City of Pasadena Police Department has received several requests for disclosure of all auto accident reports filed with the City of Pasadena. You advise us that some of the requestors have indicated to the city that they intend to sell the accident reports or the information contained in the reports to various commercial subscribers. Texas Business and Commerce Code section 35.54 declares that it is an offense to use motor vehicle accident reports to solicit business or to sell information from such a report. The city inquires whether it is required to disclose the accident reports pursuant to the Open Records Act. The city contends that the accident reports are excepted from required public disclosure pursuant to sections 3(a)(1) and 3(a)(3) of the Open Records Act.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." With regard to some of the requestors, you contend that the accident reports are, in effect, deemed confidential by Texas Business and Commerce Code section 35.54 because they have already indicated that they intend to sell the reports or the information they contain.

Section 35.54 of the Business and Commerce Code does not deem accident reports confidential by law; rather, this provision limits the use of such accident reports, *i.e.* it declares it unlawful to sell the reports or the information they contain. Furthermore, section 47 of article 6701d, V.T.C.S., states that *motor vehicle accident reports are deemed public records*. Thus, section 3(a)(1) does not apply.

Section 3(a)(3) excepts from required public disclosure "information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party." "[I]nformation specifically made public by statute does not come within the section 3(a)(3) exception." Open Records Decision No. 161 (1977) at 2. In Open Records Decision No. 43 (1974) at 2, this office stated:

The question is then whether the information may be excepted from disclosure by Sec. 3(a)(3), as information relating to litigation of a civil nature to which the city is or may be a party. Where, as here, the information is developed as part of the preparation of an official report specifically made public by statute, we do not believe the Sec. 3(a)(3) exception applies.

In Open Records Decision No. 43 this office ruled that section 47 of article 6701d trumped the more general provisions of the Open Records Act. Therefore, section 47 of article 6701d is controlling and the accident reports may not be withheld pursuant to section 3(a)(3) of the Open Records Act.

You also inquire whether the city can refuse to furnish accident reports to persons that the city knows is selling such reports in violation of Texas Business and Commerce Code section 35.54 and whether the city may require accident report requestors to sign an affidavit stating that they do not intend to sell the reports in violation of section 35.54. These proposed measures are prohibited by the Open Records Act.

The Open Records Act requires the governmental body to furnish records for inspection and copying on request, subject only to the exceptions of the act. V.T.C.S. art. 6252-17a, §§ 3(a), 5(b), 5(c). Open Records Act section 5(b) states that "[n]either the officer for public records nor his agent *shall make any inquiry of any person* who applies for inspection or copying of public records beyond the purpose of establishing proper identification and the public records being requested." [Emphasis added]. This office has previously held that the commercial use for which records are sought and the motive of the requestor in requesting particular documents is irrelevant to the question of the availability of the documents under the Open Records Act. Attorney General Opinion JM-757 (1987); Open Records Decision Nos. 542 (1990) at 2; 508 (1988) at 2; 161 (1977) at 2. Therefore, the city must furnish the records upon request, irrespective of the requestor's motive or intended use of the records, and the city cannot require that the requestor to affirm that he will not violate section 35.54 of the Business and Commerce Code as a condition for furnishing the records.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-698.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/lmm

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