



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 23, 1996

Ms. Patricia Hershey  
Staff Attorney  
Litigation Support Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR96-0793

Dear Ms. Hershey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39988.

The Texas Natural Resource Conservation Commission (the "commission") received a request for "any reports, compliance filings, testing results and/or any other document concerning the McGinnis Industrial Maintenance Corporation's waste site, sometimes known as the McGinnis Pits." The commission has made available to the requestor some of the requested information. You have submitted to this office a representative sample<sup>1</sup> of information that you contend is excepted from public disclosure under section 552.101 of the Government Code as information protected by the informer's privilege. You have also submitted notes, letters, and other documents that you assert are excepted from public disclosure under section 552.107 of the Government Code.

Section 552.101 excepts from disclosure information that is confidential by law, either constitutional, statutory, or by judicial decision. The informer's privilege, incorporated into the Open Records Act by section 552.101, is actually a governmental entity's privilege to withhold from disclosure the identity of those persons who report violations of law. The privilege recognizes the duty of citizens to report violations of law and, by preserving their anonymity, encourages them to perform that duty. *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege protects the identity of a person who reports a violation or possible violation of law to officials charged with the duty of enforcing the particular law, provided that the subject of the information does not

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<sup>1</sup>We 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

already know the informer's identity. *See* Open Records Decision Nos. 515 (1988), 191 (1978). This office has held that the informer's privilege also applies when the informer reports violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 515 (1988) at 2 (quoting Open Records Decision No. 279 (1981) at 2). The privilege may protect the informer's identity and any portion of his statement that may tend to reveal his identity. Open Records Decision No. 515 (1988) at 2.

The commission is one agency responsible for enforcing environmental statutes. You submitted to us an investigation report that contains the identity of an individual who reported to the commission a possible violation of an environmental statute. Therefore, the commission may withhold from disclosure information that identifies or tends to identify the informer. We have marked the investigation report accordingly. We assume for purposes of this ruling that the person complained of does not know the identity of the informer.

Section 552.107 excepts information from public disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions. Open Records Decision No. 574 (1990) at 5. However, section 552.107(1) does not protect purely factual information, unless the factual information constitutes a confidence that the client communicated to the attorney. *See id.* We have marked those portions of the documents at issue that the commission may withhold from public disclosure under section 552.107 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

Ref.: ID# 39988

Enclosures: Marked documents

cc: Ms. Cindy A. Meador  
Anthony P. Griffin, Inc.  
1115 Moody  
Galveston, Texas 77550  
(w/o enclosures)



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 24, 1996

Mr. Ron M. Pigott  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR96-0794

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 39930.

The Texas Department of Public Safety (the "department") received a request for the departments's daily dispatch logs. You contend the requested information is excepted from required public disclosure under section § 552.101 of the Government Code.

Section 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. The Seventy-fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d,<sup>1</sup> amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414. As amended, section 47(b)(1) places certain

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<sup>1</sup>Effective September 1, 1995, article 6701d was repealed and codified as part of the Transportation Code. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Sess. Law Serv. 1025, 1870-71; see Trans. Code § 550.065 (release of accident reports). The legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 1, 1995, 74th Leg., ch. 165, § 25, 1995 Tex. Sess. Law Serv. 1025, 1871. The repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S., in House Bill 391 remains in effect as current law and may be found following section 550.065 of the Transportation Code. See also Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414.

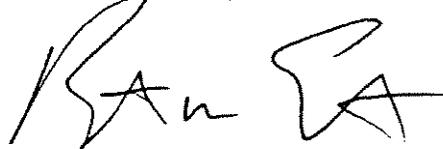
restrictions on the general public's access to "all *accident reports* made as required by [V.T.C.S. art. 6701d] or [V.T.C.S. art. 6701h]."<sup>2</sup> (Emphasis added). Specifically, section 47(b)(1) provides that a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request *only* to, among others, a person who provides the law enforcement agency with two or more of the following: (1) the date of the accident, (2) the name of any person involved in the accident, or (3) the specific location of the accident.

Section 47(b)(1), however, specifically applies only to "accident reports" contemplated by article 6701d, V.T.C.S., or article 6701h, V.T.C.S. As a daily log of dispatch calls is distinct from "accident reports" that are addressed in section 47(b)(1), this law does not apply to the requested dispatch logs. *See* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making particular information confidential). Because the requested information is not made confidential by this provision and you have raised no other exceptions to disclosure, you must release the requested information.

You express concern that the requester is "attempting to circumvent" the requirements of section 47(b)(1). Section 552.222 of the Government Code prohibits the inquiry by the governmental body into the motives of the person applying for inspection or copying of records. *See* Open Records Decision No. 542 (1990). Consequently, the requester's motives for obtaining these records are not relevant to an analysis as to whether the records are subject to required public disclosure. *Id.*

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Robert W. Schmidt  
Assistant Attorney General  
Open Records Division

RWS/rho

Ref.: ID# 39930

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<sup>2</sup>Effective September 1, 1995, these statutes were repealed and replaced as part of the Transportation Code. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Sess. Law Serv. 1025, 1870-71.

Enclosures: Submitted documents

cc: Mr. Russell S. Carter  
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(w/o enclosures)