



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 1, 1997

Ms. Jennifer D. Soldano
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR97-0667

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 105464.

The Texas Department of Transportation (the "department") received a request for five items of information, including information concerning an investigation. You advise that the department will release the third requested item. You assert that the remainder of the requested material is excepted from required public disclosure based on Government Code section 552.101.

Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. You say that the requested information is subject to the proscriptions of section 409 of title 23 of the United States Code, which provides as follows:

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled for the purpose of identifying, evaluation, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and 152 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for

damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, list, or data.

You state that the department prepared the requested information to identify possible safety problems related to highway construction improvement projects.

Assuming the requested information is subject to this statute, we do not believe the statute makes such information confidential for purposes of section 552.101 of the Government Code. The federal provision states that such information "shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages." Thus, the statute's prohibition on the use of the information is limited to the context of a court proceeding. It follows that, as the prohibition is limited by its terms to a court proceeding, the statute does not control the release of information to the public outside of the context of a court proceeding, such as a request for information under the act. We note that a governmental body may not ask a requestor why he or she is seeking information. See Gov't Code § 552.222. Moreover, section 552.101 does not incorporate discovery or evidentiary privileges, since information is privileged only to the extent that the court in a particular case deems it to be so. See Open Records Decision No. 575 (1990) at 2. Accordingly, the department may not withhold the requested information from public disclosure based on section 552.101 of the Government Code.

We note, however, that the Open Records Act's exceptions do not, as a general rule, apply to information made public by other statutes. Open Records Decision No. 525 (1989). Much of the information submitted to this office includes accident reports. Access to accident reports is governed by law other than the Open Records Act. The Seventy-fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports.¹ Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414. As amended, section 47(a) states that, except as provided by section 47(b), these accident reports are privileged and for the confidential use of the Department of Public Safety and agencies who

¹Effective 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 Transp. 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., R.S., 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.

use the reports for accident prevention purposes.² Thus, you must not release the accident reports to the requestor.

We are resolving this matter with this 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 may 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,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref.: ID# 105464

Enclosures: Submitted documents

cc: Mr. Gordon B. Jones
2805 Ingram
Grand Prairie, Texas 75052
(w/o enclosures)

²Effective 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.

