



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 17, 1997

Mr. Merrill E. Nunn  
City Attorney  
City of Amarillo  
Legal Department  
P.O. Box 1971  
Amarillo, Texas 79105-1971

OR97-2314

Dear Mr. Nunn:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110363.

The City of Amarillo (the "city") received a request for its investigative report of a certain automobile accident. You assert that the requested information is excepted from required public disclosure based on section 552.103 of the Government Code.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). See Open Records Decision No. 638 (1996). The requested records may be withheld with the following exceptions.<sup>1</sup>

Information specifically made public by statute does not come within section 552.103. See Open Records Decision No. 161 (1977). Article 49.25, Code of Criminal Procedure, provides that autopsy reports prepared by a medical examiner are public records. See Open Records Decision No. 529 (1989). Thus, the city may not withhold the autopsy report from the requestor based on section 552.103 of the Government Code. Furthermore, the officer's accident report must be released to the requestor based on section 47(b)(1) of V.T.C.S. article 6701d.<sup>2</sup> Under this provision, a law enforcement agency "is required to release" a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of the following information specified by the statute: the date of the accident, the name of any person involved in the accident, or the specific location of the accident. In the situation at hand, the requestor has provided the city with the requisite information. Thus, section 47(b)(1) of article 6701d, V.T.C.S. requires the city to release the report to the requestor.

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<sup>1</sup>If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

<sup>2</sup>The Seventy-fifth Legislature repealed, codified and amended V.T.C.S. article 6701d. Act of May 27, 1997, S.B. 1069, 75<sup>th</sup> Leg., R.S., ch. 1187 ("SB 1069"). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of sections 1, 2 and 13 of SB 1069. *Tex. Daily Newspaper Ass'n v. Morales*, No. 97-08930 (345<sup>th</sup> Dist. Ct., Travis County, Tex., Oct. 24, 1997) (order granting temporary injunction). A temporary injunction preserves the status quo until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589 (1962). The Texas Supreme Court has defined the status quo as "the last, actual peaceable, non-contested status that preceded the pending controversy." *Texas v. Southwestern Bell Telephone Co.*, 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of SB 1069 is governed by section 47 of article 6701d, V.T.C.S.

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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/rho

Ref.: ID# 110363

Enclosures: Submitted documents

cc: Mr. Timothy G. Pirtle  
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P.O. Box 9375  
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(w/o enclosures)

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