



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 12, 1998

Ms. Kristi A. Taylor
Assistant City Attorney
Neiman & Barnes, L.L.P.
P.O. Box 777
Lewisville, Texas 75067

OR98-0439

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112723.

The Lewisville Police Department (the "department"), which your firm represents, received a request for "the name and the report of the first driver arrested for the DWI involved in my father's death on I-35 and 407 . . . about 3:00 a.m. on Nov. 2nd, 1997." In response to the request, you submitted to this office for review the information which you assert is responsive, specifically two related offense reports.¹ You claim that, "with the exception of information ordinarily appearing on the first page of the offense report," the requested information is excepted from required public disclosure by section 552.108 of the Government Code.² We have considered the exception you claim and have reviewed the documents at issue.

Initially, we note that among the records you have submitted to our office for review you included what appears to be a magistrate's warning, an arrest warrant and an arrest warrant affidavit. If the submitted magistrate's warning, arrest warrant and affidavit have

¹In your letter to this office, you explain that "offense reports [97-10637 and 97-10638] are related because there were two people arrested for acts arising at the same location," and because the requestor indicates that "she wants both offense reports."

²As you have noted, basic information normally found on the front page of an offense report and an arrest report, including a detailed description of the offense, is generally considered public. See Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

been filed with a court, they are part of the public record and must be released.³ See *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding). If, however, the arrest warrant has not been filed with a court, we will consider whether the affidavit and the remaining records are protected from disclosure by section 552.108 of the Government Code.

We also note that included among the submitted information you seek to withhold is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064 (officer's accident report). We note that section 550.065 of the Transportation Code concerns the disclosure of accident report information. However, a Travis County district court has issued a temporary injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Ass'n. v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed 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*, 163 Tex. 616, 617, 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 Tel. Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of S.B. 1069 is governed by section 47 of article 6701d, V.T.C.S.⁴

Section 47(b)(1) provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report *is required to release a copy of the report* on request to:

....

³The "law-enforcement exception" was not intended by the legislature to shield from public view information in the hands of police units that, absent special law enforcement needs or circumstances, would ordinarily be available to the public if possessed by a different governmental unit. See Open Records Decision Nos. 434 (1986) at 2, 287 (1981) at 2 (whether information falls within section 552.108 must be determined on a case-by-case basis).

⁴Although the Seventy-fourth Legislature repealed and codified article 6701d as part of the Transportation Code, 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, §§ 24, 25, 1995 Tex. Sess. Law Serv. 1025, 1870-71. Furthermore, 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. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, 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. is the existing law regarding the availability of accident report information, 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.

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident

V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). 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 information specified by the statute. *Id.* In the situation at hand, the requestor has provided the department with the date of the accident and the location of the accident. Thus, you are required to release this information under section 47(b)(1)(D) of V.T.C.S. article 6701d.

Although you have raised section 552.108 of the Government Code as an exception to disclosure, the Open Records Act's exceptions do not, as a general rule, apply when the release of information is expressly controlled by other statutes. Open Records Decision No. 525 (1989) at 3. We conclude that the accident report, in its entirety, must be released to the requestor.

We will next consider whether the remaining information, other than the accident report, may be withheld pursuant to section 552.108, the "law enforcement exception." Section 552.108 of the Government Code, in part, reads as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. You state that section 552.108 is applicable to the submitted information, because both reports "involve active investigations, and the release of this information would interfere with the detection and investigation of this crime." As the requested records relate to a pending criminal investigation or prosecution, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. Therefore, except as noted above, the remaining information may be withheld pursuant to section 552.108(a)(1).⁵

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,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref: ID# 112723

Enclosures: Submitted documents

cc: Ms. Luana North
345 Fagg Dr.
Lewisville, Texas 75057
(w/o enclosures)

⁵We note that some of the information in the submitted documents is also confidential by law. Therefore, if you choose to waive your right to withhold the information under section 552.108, we urge you to exercise caution in releasing the information to the public. See Gov't Code § 552.352.