



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 23, 1998

Captain Robert Taylor
Amarillo Police Department
200 E. 3rd
Amarillo, Texas 79101-1514

OR98-0516

Dear Captain 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# 112757.

The Amarillo Police Department (the "department") received a request for a specific police report. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the written request for information.

Pursuant to section 552.303(c) of the Government Code, this office notified you by letter dated January 7, 1998 that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue is public information.

Though you timely provided this office a copy of the information sought by the requestor, you did not provide the written request for information, which our January 7, 1998 notice to you stated we required. Therefore, as provided by section 552.303(e), the information that is the subject of this request for information is presumed to be public information. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Where information is made confidential by other law or where third party interests are at issue a compelling reason exists to overcome the presumption that information is open under section 552.303(e). *See* Open Records Decision No. 150 (1977).

We note the submitted information includes drivers' license numbers. The Seventy-fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

* * * *

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

On this basis, we conclude the department must withhold the driver's license number from the document we have marked pursuant to section 552.130. However, included with the information submitted to this office was 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). This report also contains a driver's license number.

The Seventy-fifth Legislature repealed V.T.C.S. article 6701d, and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information. Act of May 29, 1997, 75th Leg., R.S. ch. 1187, 1997 Tex. Sess. Law Serv. 4575 (Vernon), (to be codified at Transp. Code § 550.065). 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*, 358 S.W.2d 589 (1962). The 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.¹

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:

....

(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

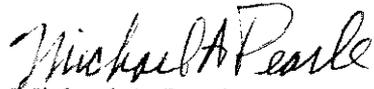
V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). Under this provision, a law enforcement agency “is required to release” a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* As you did not submit the request to this office, we are unable to determine whether the requestor provided two or more pieces of the required information. If the requestor did provide this information, then under section 47(b)(1)(D) of article 6701d, V.T.C.S, you are required to release the accident report in its entirety to the requestor, and the driver’s license information should not be redacted from the accident report form. If the requestor did not, then the accident report is excepted from disclosure pursuant to article 6701d, V.T.C.S.

¹Although 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.

In conclusion, the department must release all of the requested information except the driver's license information we have marked, and the accident report form, *unless* the requestor provided at least two of the pieces of information required for the release of accident reports by section 47(b)(1)(D) of article 6701d, V.T.C.S, in which case, the accident report form must also be released in its entirety.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,


Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 112757

Enclosures: Submitted documents

cc: Ms. Lena Wilcox
3202 Julian, #120
Amarillo, Texas 79106
(w/o enclosures)