



May 11, 1999

Ms. Carla Robinson  
Assistant City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR99-1282

Dear Ms. Robinson:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123955.

The City of College Station (the "city") received a request for information concerning three named officers. The requestor specifically asks for information about complaints filed concerning the officers as well as commendations and awards given to the officers. You assert that records responsive to this request are excepted from disclosure pursuant to section 552.103(a) of the Government Code. You contend that certain marked records are additionally excepted from disclosure under section 552.108 of the Government Code.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.), *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a).

Litigation has been found to be reasonably anticipated when an individual has hired an attorney who demands damages and threatens to sue the governmental entity. Open Records Decision No. 551 at 2 (1990). However, when a requestor on several occasions publicly states a threat to sue, this alone does not show that litigation is reasonably anticipated. You submitted information to this office that shows the requestor has filed a complaint

concerning the named officers, and you speculate that the requestor may be threatening to file suit against the city. However, the information you have provided is not sufficient to show that the city reasonably anticipates litigation. Open Records Decision No. 518 at 5 (1989) (governmental body must show that litigation involving a specific matter is realistically contemplated). The records thus may not be withheld from disclosure under section 552.103(a).

You marked certain records as being protected from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if the information deals with the detection, investigation, or prosecution of crime in relation to an investigation that did not result in conviction or deferred adjudication. Section 552.108(b)(2) provides that an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from disclosure if the information relates to law enforcement in an investigation that did not result in conviction or deferred adjudication. We have reviewed the records you marked as protected under section 552.108. As the investigation at issue appears to be a personnel investigation rather than a criminal investigation, section 552.108 is inapplicable. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) We note also that section 58.007(c) of the Family Code, which generally protects from disclosure law enforcement records concerning children, does not appear to be applicable to the marked records.

We have reviewed the submitted records and note that some of the information at issue is otherwise protected from disclosure. We marked certain information that is confidential under common-law privacy as protected by section 552.101 of the Government Code. Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 (1992).

Criminal history information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *See also* Gov't Code 411.084 (prohibiting release of criminal history information obtained from Department of Public Safety).

Information that is protected by common-law privacy includes compilations of criminal history or "rap sheets." In *Houston Chronicle Publishing 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), the court addressed the availability to the public of certain broad categories of documents in the possession of a city police department, including offense reports, police blotters, "show-up" sheets, arrest sheets, and "Personal History and Arrest Records." The court held that some of this information was available to the public, including the police blotters, "show-up" sheets, and offense reports. However, the court also held that "Personal History and Arrest Records" were excepted from required public disclosure. These records primarily contained criminal histories, such as information regarding previous arrests and other data relating to suspected crimes, including the offenses, times of arrest, booking numbers, locations, and arresting officers. *Houston Chronicle Publ'g Co.*, 531 S.W.2d at 179. Such a criminal history record is generally referred to as a "rap sheet." The court held that release of these documents would constitute an unwarranted invasion of an arrestee's privacy interests. *Id.* at 188. We note that the submitted documents include a rap sheet, which is confidential and must be withheld from disclosure.

We note that some of the documents at issue contain social security numbers. If a social security number was obtained or maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990, it is confidential pursuant to section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. Open Records Decision No. 622 (1994).

The submitted documents also include accident reports and portions of accident reports, which are generally confidential. The Seventy-fifth Legislature repealed article 6701d of Vernon's Texas Civil Statutes 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 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). Thus, the status quo of accident report information prior to the enactment of S.B. 1069 is governed by section 47 of article 6701d of Vernon's Texas Civil Statutes.<sup>1</sup>

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<sup>1</sup>Although 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

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). Because the requestor has not provided two of the three pieces of information required to receive accident reports, the reports are confidential under section 47 of article 6701d.

The information at issue also contains driver's license numbers, license plate information, and VIN numbers. Section 552.130 (a) of the Government Code provides that information is protected from disclosure if it relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of the state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Thus, you must withhold the driver's license numbers, license plate, and VIN numbers.

We agree that some of the information, as discussed, is confidential. However, the remaining information is public and must be disclosed.

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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.

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.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written in a cursive style.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 123955

encl. Submitted documents

cc: Mr. Jon Marshall  
P.O. Box 4387  
Bryan, Texas 77805  
(w/o enclosures)