



July 27, 1999

Lieutenant Terry Lichtie  
Amarillo Police Department  
200 S E 3<sup>rd</sup>  
Amarillo, Texas 79101-1515

OR99-2110

Dear Lieutenant Lichtie:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the “act”), chapter 552 of the Government Code. Your request was assigned ID# 126222.

The Amarillo Police Department (the “department”) received an open records request for a variety of information “pertaining to and/or naming Charity D. Tallman as a suspect, witness or complainant.”<sup>1</sup> In response to the request, you submit to this office for review the information at issue. Based on your letter to this office, it appears that you will make available to the requestor some responsive information, specifically “Adjudicated report: 92-12807.” You contend, however, that the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered your arguments and claimed exception, and reviewed the submitted information.<sup>2</sup>

---

<sup>1</sup>Generally, a request for all records of a named individual is a request for criminal history information (“CHRI”), which is confidential pursuant to the individual right to privacy. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, in this instance, since the subject of the request was the complainant or a witness in the submitted reports, we conclude that a right of privacy is not implicated. In the future, we advise you to exercise caution in releasing information to the public, when the request is phrased in terms of “all records” concerning a particular individual. *See Gov’t Code* § 552.352.

<sup>2</sup>In your letter to this office, you state that “municipal court has changed computer systems and no dispositions prior to 1993 are available.” We agree that the department is not required to provide information which is not in its possession. Open Records Decision No. 452 (1986). However, we assume that the city has followed the requisite records retention policies. *See generally* Local Gov. Code § 203.041 *et seq.* (local government record retention schedules).

Initially, we note that the Public Information Act's exceptions do not, as a general rule, apply to information made public by other statutes. Open Records Decision No. 525 (1989). We first note that included among the submitted information you seek to withhold are accident report forms that appear 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 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.<sup>3</sup>

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

---

<sup>3</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. Gen. Laws 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. Gen. Laws 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. Gen. Laws 4413, 4414.

(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 not provided the department with the required information. Therefore, you must withhold the submitted accident reports from the requestor.

As for the remaining information, consisting of incident report number 92-38782 and two other department reports pertaining to the submitted accident reports, we will next consider your assertion that “many of these records are excepted from disclosure under section 552.108 of the Government Code.”<sup>4</sup> Section 552.108, the “law enforcement exception,” provides in relevant part 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

....

(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. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

---

<sup>4</sup>Among the records you have submitted to our office for review you included what appear to be documents filed with a court. We advise you that documents which are part of the public record cannot be withheld under section 552.108 of the Government. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding).

You assert that the submitted information is excepted from disclosure, "because the respective case investigations have been **concluded**; they have **not been adjudicated** and therefore has not resulted in a **conviction or deferred adjudication** against any person." As stated above, the submitted "Texas Peace Officer's Accident Report" forms must be withheld in their entirety since the requisite information was not submitted, however, as for the remaining, which is not part of the public record, we agree that the information may be withheld pursuant to section 552.108. Based on your arguments and submitted information, we find that you have shown the applicability of section 552.108(a)(2) to a portion of the requested information, since the investigations *did not* result in conviction or deferred adjudication.

As you are aware, certain basic information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public. See Gov't Code § 552.108(c). Section 552.108(c) provides that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." See generally *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). A review of the information at issue shows that most of the information consists of basic information. Therefore, we conclude that, except for basic front page information the submitted information may be withheld under section 552.108(a)(2) of the Government Code, though the department also has discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

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,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 126222

encl: Submitted document

cc: Ms. Charly Hopkins  
Underwood, Wilson, Berry, Stein & J  
P.O. Box 9158  
Amarillo, Texas 79105-9158  
(w/o enclosures)