



December 13, 1999

Mr. Kevin M. McGraw
Assistant City Attorney
Legal Services
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR99-3597

Dear Mr. McGraw:

You ask 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# 130380.

The City of Waco (the "city") received a request for "[a]ny and all accident reports involving City of Waco Waste Management Vehicles from January 1994 to present." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 550.065(c)(4) of the Transportation Code. We have considered the exception you claim and reviewed the submitted information.

The city has not complied with the Act's procedures for requesting an open records ruling in two respects. First, the city failed to submit to this office a copy of the information at issue, or representative samples of the information if the information is voluminous. Gov't Code § 552.301(e). Second, the city did not request a decision from this office within ten business days from the date of receiving the request. *Id.* § 552.301(b). The city's failure to comply with these procedures results in the presumption that the information is public. *Id.* § 552.302. That presumption is overcome, if the information at issue is made confidential by law. *See* Open Records Decision No. 150 (1978). To the extent the city maintains responsive information that is not made confidential by law, the city must release the information to the requestor.

We will next consider whether accident reports created pursuant to chapter 550 of the Transportation Code are confidential. The Seventy-fifth Legislature, repealed, codified, and amended V.T.C.S. article 6701d, concerning the disclosure of accident report information. Act of May 29, 1997, S.B.1069, § 13, 75th Leg., R.S. (codified at Transp. Code § 550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of section 13 of SB 1069 for ninety days. *Texas Daily Newspaper Association, et al., v. Morales, et al.*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Aug. 29, 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 et al.* 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 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.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

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. See also Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 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 city with the date of the accident, the names of persons involved in the accident or the location of the accident. Thus, based on section 552.101 of the Government Code in conjunction with section 47(b)(1)(D) of article 6701d of the Texas Civil Statutes, you must not release any peace officer accident reports to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/jc

Ref: ID# 130380

cc: Ms. Nita Fanning, Esq.
P.O. Box 975
Waco, Texas 76703-0975