



February 24, 2000

Ms. Elaine S Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2000-0677

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132428.

The City of El Paso (the "city") received a request for the city police department's vehicle pursuit policy and all information related to the city's investigation surrounding a particular police pursuit. You have released portions of the requested information, but claim that the remaining requested information is excepted from disclosure under sections 552.107, 552.108, 552.117, and 552.130 of the Government Code and section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code and sections 402.083 and 402.092 of the Labor Code. We have considered the exceptions you claim and reviewed the submitted information.

You have submitted the information to us in exhibits labeled B - H. You assert the section 552.108 of the Government Code protects Exhibits B, C, and F from required disclosure.

Section 552.108 provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime [.]

(b) 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 [required disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution [.]

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits B, C, and F relate to a pending investigation. We agree that release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See 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) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). We believe that "basic information" refers to the information held to be public in *Houston Chronicle Publishing Company 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). You must release basic information about the crime to the requestor. You state that you have already done so. Therefore, except for basic information, the city may withhold Exhibits B and C from required public disclosure under section 552.108(a)(1) of the Government Code, although the city may choose to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007. The city may also withhold under section 552.108(a)(1) all but the one page we have tabbed in Exhibit F. We discuss that page following our discussion of Exhibit H.

As you point out, the submitted information does contain driver's license numbers, license plate numbers, vehicle identification numbers, and social security numbers, which may be protected from disclosure. The social security numbers in the reports may be confidential if they were obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990, in which case they must be withheld. 42 U.S.C. 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994). Section 552.130 of the Government Code excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. You must withhold the driver's license numbers, license plate numbers, and vehicle identification numbers from Exhibits B and C under section 552.130. You state that you have released Exhibit G, with the stolen vehicle information redacted under section 552.130. We find that section 552.130 requires the city to withhold only the license plate information and vehicle identification number. We have marked that information. The remaining redacted information in Exhibit G must be released.

You assert that section 552.108 also protects Exhibit H from required disclosure, but you also remind us of a prior determination made by this office regarding essentially the same

information. In that ruling, Open Records Letter No. 98-0889 (1998), this office recognized a section 552.108(b)(1) interest in protecting the requested information from disclosure. We note that a governmental body is not required to seek a determination from this office regarding the disclosure of information if the governmental body has previously requested and received a determination from this office concerning precisely the same information, provided that there have been no substantive changes in circumstances or law that would require us to reexamine those documents. Gov't Code § 552.301(a).

Because the information in Exhibit H is slightly different from the information ruled on in Open Records Letter No. 98-0889 (1998) and because the 1999 changes to section 552.022(a) of the Government Code may require a different result from the prior ruling, you were correct to submit Exhibit H for our review. We find that those highlighted portions of Exhibit H that are substantially similar to portions of the information previously submitted which we allowed the city to withhold continue to be excepted from required disclosure and may be withheld. We have marked those portions of Exhibit H that may be withheld. However, you have highlighted one sentence and one part of a sentence that were previously found to be required to be released. Once public information has been made available to one requestor, it must be made available to any person. Gov't Code § 552.007(b). We have marked those portions of your highlighted sections of Exhibit H that must be released. The tabbed page of Exhibit F relates to Exhibit H. We have marked the questions on that page which you may withhold under section 552.108(b)(1) because they substantially reveal information from Exhibit H which you may withhold. You must release questions 1, 2, 6, and 8.

Exhibit D consists of an accident report. The Seventy-fifth Legislature repealed article 6701d of the 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 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.<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

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). 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.* The information is otherwise confidential. The request shows that the requestor submitted at least two of the requisite pieces of information. Because the requestor has complied with section 47(b)(1) of article 6701d, you must release the accident report to the requestor. This is true even though the report contains information subject to section 552.130. The legislature provided for the release of an accident report to a requestor who provides the required information and did not instruct governmental bodies, in article 6701d or section 550.065, to redact any information from accident reports that are subject to required release. Thus, we interpret the accident report release provision to require the release of unredacted accident reports.

You state that the city has released all of Exhibit E, except for two pages which you claim to be confidential under section 552.101 of the Government Code, in conjunction with sections 402.083 and 402.092 of the Labor Code. Section 552.101 of the Government Code exempts from required public disclosure information considered to be confidential by law, including information made confidential by statute.

Section 402.083 (a) of the Labor Code reads as follows:

(a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle.

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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* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414.

This provision makes confidential information in the files of the Texas Workers' Compensation Commission (the "commission"). Likewise, section 402.092 provides that information maintained in the investigation files of the commission is confidential as provided in section 402.083. Labor Code § 402.092(c). Both documents in Exhibit E which you seek to withhold are forms that the city apparently submitted to its workers' compensation insurance carrier. They were not obtained from the commission. *See* Open Records Decision No. 533 at 4 (1989). We, therefore, do not believe that the Labor Code provisions apply to the workers' compensation forms in Exhibit E. Those two pages may not be withheld under section 552.101 in conjunction with either section 402.083 or section 402.092 of the Labor Code. However, the forms do contain information which the city must redact prior to their release. You must withhold home addresses, home phone numbers, social security numbers, and information which reveals whether the peace officer has family members, as provided by section 552.117 (2) of the Government Code.

In summary, the city must release the basic information from Exhibits B and C, but may withhold the remainder of those exhibits under section 552.108(a)(1). However, the city must redact section 552.130 information. The city must release all of Exhibit D. The city must release the two pages not yet released from Exhibit E, but must redact the section 552.117 information as marked. The city must release questions 1, 2, 6, and 8 from the tabbed page in Exhibit F, but may withhold the remainder of that exhibit under section 552.108(a)(1). The city must release Exhibit G, but must redact the section 552.130 information as marked. The city may withhold the information we have marked on Exhibit H under section 552.108(b)(1), but must release the remainder of that exhibit.

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,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/jc

Ref: ID# 132428

Encl. Submitted documents

cc: Mr. David Garlick  
Reporter  
KSTM-TV  
801 North Organ  
El Paso, Texas 79902  
(w/o enclosures)