



April 13, 2001

Mr. Kuruvilla Oommen  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2001-1481

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146018.

The City of Houston (the "city") received a request for information concerning city liability insurance policies. More specifically, the requestor asks that

you provide us a statement of the following information with regard to each known policy of liability insurance in effect, including excess or umbrella insurance:

1. The limits of liability coverage;
2. A statement of any policy or coverage defense which such insurer reasonable[y] believes available to such insurer at the time of filing such statement.

The requestor also seeks "a copy of all applicable insurance policies with declaration sheets," as well as "copies of any and all statements made by [the requestor's] client" in possession of the city.<sup>1</sup> You inform us that since the city is self-insured, there are no documents

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<sup>1</sup>We note that you have submitted the request letter as Exhibit 1. We have no indication that the requestor clarified or in any way altered the request as it appears in this exhibit.

responsive to his request for insurance policy information. You assert that certain other information which you claim is responsive is excepted from disclosure under sections 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code, as well as under section 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, with regard to the information requested which you assert does not exist, chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within chapter 552's purview if it does not exist when governmental body receives a request for it). Nor is a governmental body required to prepare new information to respond to a request for information. Open Records Decision No. 605 (1992), 572 (1990), 416 (1984). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 at 8 (1990). If the city holds information from which the requested information can be obtained, it must provide that information to the requestor unless it is otherwise excepted from disclosure.

With regard to the information you have submitted in Exhibit 2, including photographs, we find that other than one document which contains a statement from the requestor's client, this information is not responsive to the request in this case. Therefore, with the exception of the one responsive document, we decline at this time to consider your raised exceptions for withholding the information submitted as Exhibit 2. Although this information need not be released to the requestor at this time, should you receive a request for the information in Exhibit 2 in the future, you should request a ruling from this office.

With regard to the document containing a statement of the requestor's client, we note that the statement is contained in 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). The Seventy-fourth Legislature amended section 47 of article 6701d, V.T.C.S. to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413. Further, the Seventy-fourth Legislature also repealed and codified article 6701d as section 550.065 of the Transportation Code without substantive change. *See* Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25, 1995 Tex. Gen. Laws 1025, 1870-71.<sup>2</sup> In section 13 of Senate Bill 1069, the

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<sup>2</sup>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 of section 47 of article 6701d, V.T.C.S. is preserved and given effect as part of the code provision. *See* Gov't Code § 311.031(c). In 1997, the Seventy-fifth Legislature enacted Senate Bill 898 and amended section 550.065 of the Transportation Code to conform to section 47 of article 6701d as enacted by the Seventy-fourth Legislature and repealed article 6701d. *See* Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 30.125, 1997 Tex. Gen. Laws 327, 648-49.

Seventy-fifth Legislature amended section 550.065 of the Transportation Code to provide for release of accident reports under specific circumstances. Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582-83 (current version at Transp. Code § 550.065). The Seventy-fifth Legislature also repealed section 47 of article 6701d, V.T.C.S. in section 16 of Senate Bill 1069. *Id.* § 16(b), 1997 Tex. Gen. Laws 4575, 4583.

However, a Travis County district court has issued a permanent injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code enacted by section 13 of Senate Bill 1069. *Texas Daily Newspaper Ass'n v. Cornyn*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., April 26, 2000). The district court has declared that the law in effect prior to the passage of Senate Bill 1069 now governs and remains unaffected by the permanent injunction. We have determined that the law in effect prior to the passage of Senate Bill 1069 was section 47 of article 6701d, V.T.C.S.<sup>3</sup>

Section 47(b)(1) of article 6701d 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[.]

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<sup>3</sup> Although the Seventy-fifth Legislature enacted Senate Bill 898 prior to the passage of Senate Bill 1069, Senate Bill 898 was not effective until September 1, 1997. See Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 33.01, 1997 Tex. Gen. Laws 327, 712. Further, Senate Bill 1069 expressly provides that to the extent of any conflict, Senate Bill 1069 prevails over another Act of the Seventy-fifth Legislature. See Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 16(c), 1997 Tex. Gen. Laws 4575, 4583. If irreconcilable amendments are enacted at the same session of the legislature, the latest in date prevails. Gov't Code § 311.025(b). Because Senate Bill 898 was never effective and later amendments prevail, we conclude that section 47 of article 6701d, V.T.C.S. was the law in effect prior to the passage of Senate Bill 1069 regarding the availability of accident report information rather than section 550.065 as amended by Senate Bill 898.

V.T.C.S. art. 6701d, § 47(b)(1). *See* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413.<sup>4</sup> Under this provision, a law enforcement agency employing a peace officer who made an accident report “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 provided the city with the date of the accident, and the names of persons involved in the accident. Thus, you are required to release the information under section 47(b)(1) of article 6701d, V.T.C.S.

You argue, however, that sections 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code, as well as section 552.103 of the Government Code, except the information from disclosure. Section 143.089 contemplates two different types of personnel files, a police officer’s civil service file that the police department is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov’t Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the officer’s civil service file maintained under section 143.089(a). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See Id.* §§ 143.051-.055. Such records are subject to release under chapter 552 of the Government Code. *See Id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer’s alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov’t Code § 143.089(b). Information that reasonably relates to an officer’s employment relationship with the police department and that is maintained in a police department’s internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, No. 04-99-00848-CV, 2000 WL 1918877 (Tex. App.–San Antonio Dec. 20, 2000, no pet. h.); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.–Austin 1993, writ denied).

You state that the submitted information is contained in a police officer’s personnel file under section 143.089(g), and that no discipline was imposed on the officer. Therefore, as section 143.089(g) makes such information confidential, a conflict exists between section 143.089(g) of the Local Government Code and section 47(b)(1) of article 6701d, V.T.C.S. Because we are unable to harmonize the two statutes, we must look to the provisions dealing with conflicting statutes in the Code Construction Act. Gov’t Code § 311.001.

When reviewing conflicting statutes, the Code Construction Act provides that special or local provisions prevail over general provisions unless the general provision was enacted later than

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<sup>4</sup>We note that the text of amended section 47 of article 6701d is not found in Vernon’s Revised Civil Statutes or in the Transportation Code. However, section 47 of article 6701d is published in the 1995 General and Special Laws of the 1995 Legislature at chapter 894, section 1.

the special or local provision and the manifest intent is that the general provision prevail. Gov't Code § 311.026(b); *see also City of Dallas v. Mitchell* 870 S.W.2d 21, 22 (Tex. 1994). Because section 47(b)(1) of article 6701d, V.T.C.S. specifically applies to accident reports and was enacted after section 143.089, a statute that has a general application, we conclude that section 47(b)(1) of article 6701d, V.T.C.S. prevails over section 143.089(g) of the Local Government Code under the provisions of the Code Construction Act.<sup>5</sup>

Further, the Public Information Act's (the "act") exceptions do not, as a general rule, apply to information made public by other statutes. *See Houston Chronicle Publ'g Co. v. Woods*, 949 S.W.2d 492, 498-9 (Tex. App.—Beaumont 1997, orig. proceeding) (search warrant affidavit which is "public information" if executed is open to disclosure without exception); *Houston Chronicle Publ'g Co. v. Edwards*, 956 S.W.2d 813 (Tex. App.—Beaumont 1997, orig. proceeding); Open Records Decision Nos. 525 at 3 (1989) (holding that the act's exceptions do not generally apply to information made public by statutes other than the act), 146 at 2 (1976) (holding that the predecessor to section 552.103 does not apply to election returns, applications for candidacy, and campaign expenditure reports made public by common law and statute), 43 at 2 (1974) (holding that the predecessor to section 552.103 does not apply to traffic accident reports specifically made public by statute). Because section 47(b)(1) of article 6701d, V.T.C.S. makes the accident report at issue in this case public, the exception from disclosure in section 552.103 of the Government Code does not apply to the accident report. Thus, you must release to the requestor the accident report that we have marked with a green tag. The remaining information you have submitted in Exhibit 2 is not responsive to the request and need not be released at this time.

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

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<sup>5</sup>Section 143.089 was originally enacted as section 15A of article 1269m, V.T.C.S., by Acts 1987, 70th Leg., ch. 300, at 1669. Article 1269m, however, was repealed earlier in the same legislative session and recodified as part of chapter 143 of the Local Government Code. *See* Acts 1987, 70th Leg., ch. 149, § 49(1), at 1306. This oversight was corrected by Acts 1989, 71st Leg., ch. 1, at 31, and took effect August 28, 1989. The enactment of section 15A was, however, preserved and given effect as part of chapter 143 as of the effective date of the 1987 act. Gov't Code § 311.031(c).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 146018

Encl. Submitted documents

cc: Mr. Kenneth W. Smith  
1917 North Main  
Houston, Texas 77009  
(w/o enclosures)