



September 27, 2001

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2001-4340

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 152470.

The City of Allen Police Department (the "department") received a request for information, paraphrased as follows, regarding a specified motor vehicle accident and the death of a named individual:

1. All Texas Peace Officer's Accident Reports;
2. All officer's narratives, including the narratives of three named officers;
3. All case notes concerning the investigation;
4. The preliminary autopsy report;
5. The final autopsy report; and
6. Any video footage taken of the pursuit.

You indicate that some of the information responsive to the request has been released to the requestor. Among other arguments, you claim that the submitted exhibits 2 through 4, or portions thereof, are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

¹Some of the information submitted to this office that you seek to withhold was redacted prior to its submission to this office. While it is entirely appropriate that you have marked the specific information that you assert is excepted from disclosure - *see* Gov't Code § 552.301(e)(2) - we advise that in the future, such marked information should be visible to this office so that this office may properly determine whether the specific information at issue is, in fact, subject to the claimed exception.

First we address your argument pertaining to the wording of the request. You state that the request "attempts to make an on-going request" and that the department is not required to comply with such a request. We agree. The Act applies only to information in existence at the time it is requested.² Accordingly, this office has concluded that the Act does not require a governmental body to prepare new information in response to a request. *See, e.g.*, Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984). Likewise, the Act does not require a governmental body to inform a requestor if responsive information comes into existence after a request is made. Open Records Decision No. 452 at 3 (1986). Consequently, to the extent the present request asks that the department provide information that did not exist when it was made, or supply information on a periodic basis that is prepared after the department's receipt of the present request, we conclude that the department is not required to comply. *See also* Attorney General Opinion JM-48 at 2 (1983); Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). We note that the submitted exhibits do not include information responsive to the above-enumerated items 4, 5, or 6. To the extent such information existed at the time the department received the present request, we assume it has been released to the requestor. If not, the department must release such information. Gov't Code §§ 552.301, .302. We next address the submitted exhibits.

We first note that exhibit 2 contains accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). You claim that certain information you have marked in these accident reports is excepted from disclosure under section 552.130 of the Act. *See* Gov't Code § 552.130. We disagree.

The Seventy-fourth Legislature amended section 47 of article 6701d, V.T.C.S.³ 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.

²It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351.

³We advise that effective September 1, 2001, the 77th Legislature amended section 550.065(c)(4) of the Transportation Code. *See* Act of May 25, 2001, 77th Leg., R.S., ch. 1032, § 5, 2001 Tex. Sess. Law Serv. 2157, 2158 (Vernon) (codified at Transp. Code § 550.065). However, this new law applies to requests made on or after September 1, 2001, its effective date. The law in effect prior to September 1, 2001 was continued in effect for requests made prior to that date. *Id.* at § 10(c). Because the request in this instance was made prior to September 1, 2001, the prior law applies.

Laws 1025, 1870-71.⁴ In section 13 of Senate Bill 1069, the 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.⁵

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;

⁴Because 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.

⁵ 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.

(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). *See* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413.⁶ 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 department with the date of the accident, the location, and the name of a person involved in the accident. Thus, the accident report forms contained in exhibit 2 must be released to the requestor *in their entirety* under section 47(b)(1) of article 6701d, V.T.C.S.

You also assert that the entire first page of exhibit 2, as well as particular information you have marked in the remaining documents in the exhibit, is excepted from disclosure by section 552.130 of the Act. We also note that exhibit 4 contains certain information to which section 552.130 may apply. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

We believe that this exception is intended to protect an individual’s privacy interests. As such, its protection extinguishes upon the death of the individual. Much of the information at issue pertains to a deceased individual and therefore is not excepted under section 552.130. We have marked the information in exhibits 2 and 4 that pertain to this individual, and we conclude this information must be released to the requestor.⁷ However, a portion of the information in exhibits 2 and 4, which we have marked, pertains to an individual who apparently is not deceased. Thus, the department must withhold this marked information under section 552.130.

⁶We 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.

⁷Moreover, a portion of this marked information pertains to a vehicle that is indicated to have been owned by both the deceased individual and the requestor. To the extent that section 552.130 applies in order to protect the requestor’s privacy interest in this information, the requestor has a special right of access to it. *See* Gov’t Code § 552.023.

The last page of exhibit 2 contains a social security number, which you have redacted. You make no arguments or assertions with respect to this information. A social security number may be excepted from required public disclosure under section 552.101 of the Act⁸ in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). However, we believe that this protection under section 552.101 in conjunction with federal law is intended to protect individual privacy. Because the social security number at issue is that of the deceased individual, we have no basis for concluding that it is excepted from disclosure, and we therefore conclude that it is subject to release.

As to exhibit 3, a one page document, you assert that certain credit card numbers you have redacted from the document must be withheld under section 552.101 in conjunction with the common law right to privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information ordinarily meets the first prong of this test. *See, e.g.*, Open Records Decision Nos. 545 at 4 (1990), 523 at 4 (1989). However, the common law right to privacy extinguishes upon death. Because the credit card numbers at issue are that of the deceased individual, they are not excepted from disclosure on the basis that you claim.⁹

However, the Seventy-seventh Legislature passed Senate Bill 694, signed by the Governor and effective May 26, 2001, which added a new section 552.136 to the Act.¹⁰ This newly enacted exception makes certain account numbers confidential. It provides in relevant part:

⁸Section 552.101 of the Act excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, as well as information protected by the common law and constitutional rights to privacy.

⁹Your arguments allude to protecting the privacy of "any other cardholder" on the accounts at issue, but you do not affirmatively represent that any living individual is named on any of the accounts. As we have no indication that the accounts pertain to a living individual, we have no basis for concluding that common law privacy applies.

¹⁰The Legislature also enacted two other bills that add a section 552.136 to chapter 552. One is House Bill 2589, which makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The other is Senate Bill 15, which makes information maintained by family violence shelter centers confidential. *See* Act of May 14, 2001, 77th Leg., R.S., S.B. 15, § 1 (to be codified at Gov't Code § 552.136). In addition, Senate Bill 694 enacted the same language from House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Government Code.

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;
or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.136). We conclude that the department must withhold the marked information in exhibit 3 under section 552.136.

Finally, you assert that exhibit 4 constitutes criminal history record information ("CHRI") and therefore must be withheld under section 552.101. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990).

Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Most of the information contained in exhibit 4 is CHRI generated by TCIC and NCIC. Accordingly, this information is excepted from required public disclosure by section 552.101 of the Government Code and must be withheld. A portion of the information, which we have marked, does not meet the definition of CHRI. *See Gov't Code § 411.082(2)(B)*. As noted above, a portion of this information, which we have marked, must nevertheless be withheld under section 552.130. The remainder, which we have also marked, is subject to release.

In summary, the department is not required to comply with a continuing request to supply information on a periodic basis as it comes into existence. As to the submitted exhibits, we have marked certain information in exhibits 2 and 4 that must be withheld under section 552.130. The marked information in exhibit 3 must be withheld under section 552.136. The information in exhibit 4, except that which we have marked as subject to withholding under section 552.130 or that we have marked as subject to release, must be withheld under section 552.101. The department must release the remaining information in the submitted exhibits, as well as any other requested information that existed at the time the department received the present request.

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

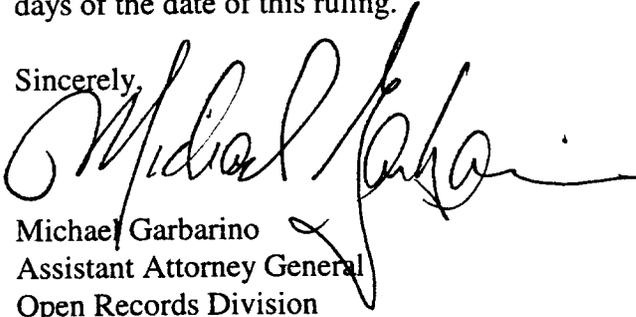
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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).

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,

A handwritten signature in black ink, appearing to read "Michael Garbarino", written over the typed name and title.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 152470

Enc: Submitted documents

c: Ms. Shain Chapman
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