



August 6, 2002

Lieutenant Arturo Valdez
Ms. Sandra Silva-Zellers, Supervisor
Central Records Division
City of McAllen Police Department
P. O. Box 220
McAllen, Texas 78505-0220

OR2002-4297

Dear Lieutenant Valdez and Ms. Silva-Zellers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166811.

The City of McAllen Police Department (the “department”) received the following four requests for information:

April 23, 2002: “daily dispatch logs, which may also be known as radio logs, radio cards, calls for service or other name(s) to describe the [department]’s records of all calls answered” for April 18-23, 2002.

May 21, 2002: “City Wide Calls for Service of Accidents that have occurred in [McAllen] (Dispatch Log).”

May 28, 2002: “traffic accident reports . . . on attached requested dates and at those specific locations.”

May 28, 2002: “daily dispatch logs, which may also be known as radio logs, radio cards, calls for service or other name(s) to describe the [department]’s records of all calls answered . . . Traffic Accidents Only . . . May 23-27, 2002.”

You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code and other state statutes. We have considered the exceptions you claim and reviewed the submitted information.

Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

It appears from the documents submitted to this office that the department received the first request for information on April 23, 2002. You did not request a decision from this office until May 31, 2002. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, the information requested on April 23, 2002 is presumed to be public information. Gov't Code § 552.302.

Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). However, because sections 552.101 and 552.130 provide compelling reasons to overcome the presumption of openness, we will address your arguments under those exceptions.

We first address the requested accident reports. Section 552.101 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. Section 550.065(b) of the Transportation Code states that it "applies only to information that is held by the [Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under [chapter 552] or Section 601.004 [of the Transportation Code.]" This section states that, except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) 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* Transp. Code § 550.065(c)(4) (codifying Act of May 22, 2001, 77th Leg., R.S., H.B. 1544, § 5). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In the situation at hand, three of the requestors have not provided the department with two of the three required pieces of information. Thus, the department must withhold the accident reports from those three requestors under section 550.065(b). The fourth requestor, however, has provided the dates and specific locations of the accidents; thus, the department must release the requested accident reports to this requestor.

You contend that section 550.065 also makes confidential any reference to reported accidents in the requested dispatch or "radio" logs. We disagree. The former version of section 550.065 made accident information contained in dispatch logs confidential. *See* Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582. However, that law was held to be unconstitutional, and its enforcement was permanently enjoined. *See Texas Daily Newspaper Ass'n v. Cornyn*, No. 97-08930 (345th Dist. Ct., Travis County, Tex.) (Final Judgment and Permanent Injunction entered January 24, 2001). Following that ruling, the Seventy-seventh Legislature enacted the present, more narrow language of section 550.065(a), which makes no reference to dispatch or call logs. *See* Transp. Code § 550.065(a). In making this change, the legislature deliberately chose to rescind any protection from disclosure that accident information in dispatch logs previously had. *See Acker v. Texas Water Comm'n*, 790 S.W.2d 299 (Tex. 1990) (legislature is presumed to have enacted statute with complete knowledge of and reference to existing law); *Buckner Glass & Mirror, Inc. v. T.A. Pritchard Co.*, 697 S.W.2d 712 (Tex. App.—Corpus Christi 1985, no writ) (when legislature amends law, it is presumed to have intended to change law); Open Records Decision No. 643 at 2-3 (1996). Accordingly, we conclude that the accident information contained in the submitted dispatch logs is not made confidential by section 550.065 and thus is not excepted from disclosure under section 552.101 of the Government Code.

The department also claims that the requested information is excepted from disclosure under section 38.18 of the Penal Code. Section 38.18 of the Penal Code provides, in relevant part:

(a) This section applies to:

- (1) information described by Section 550.065(a), Transportation Code;
- (2) information reported under chapter 772, Health and Safety Code, other than information that is confidential under that chapter; and

(3) information contained in a dispatch log, a towing record, or a record of a 9-1-1 service provider, other than information that is confidential under chapter 772, Health and Safety Code.

(b) A person commits an offense if:

(1) the person obtains information described by Subsection (a) from the Department of Public Safety of the State of Texas or other governmental entity; and

(2) the information is subsequently used for the direct solicitation of business or employment for pecuniary gain by:

(A) the person;

(B) an agent or employee of the person; or

(C) the person on whose behalf the information was requested.

You indicate that you have determined that one of the requestors, Prada Publishing Inc., intends to use the requested information for telemarketing. You seek to withhold the requested information from this requestor as the department has determined that the requestor is soliciting business from the information obtained through previous requests. Section 38.18 of the Penal Code criminalizes the use of information obtained from the Department of Public Safety or another governmental entity for direct solicitation of business or employment; it does not require a governmental entity to withhold information from a requestor. *See Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).* Indeed, the statute specifically contemplates the release of the three types of information listed in subsection (a) to a requestor. Therefore, we find that the department may not withhold any of the requested information under section 38.18 of the Penal Code.

You claim that section 552.130 of the Government Code excepts the remaining requested information from public disclosure. Section 552.130 of the Government Code 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; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130(a), (b). However, the remaining submitted information does not contain any motor vehicle information. Therefore, section 552.130 is inapplicable.

In summary, the department must release the requested accident reports to the requestor who provided the dates and specific locations of the accidents under section 550.065(b) of the Transportation Code. The department must withhold the accident reports from the other three requestors who did not provide the department with two of the three required pieces of information under section 550.065(b). The remaining submitted information must be released to the requestors.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 166811

Enc. Submitted documents

c: Ms. Yvonne Garcia
Ms. JoAnne Murphy
Mr. Doug Friedman
Prada Publishing, Inc.
3818 South Western Avenue #176
Sioux Falls, South Dakota 57105
(w/o enclosures)

Mr. Jerry O'Leary
La Tribuna
901 Lakeside Circle #10208
Lewisville, Texas 75057
(w/o enclosures)