



September 3, 2002

Ms. Teresa Coomes
Records Supervisor
City of Grand Prairie Police Department
801 Conover Drive
Grand Prairie, Texas 75051

OR2002-4936

Dear Ms. Coomes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168020.

The Grand Prairie Police Department (the "department") received four requests for access to thirty-five accident reports. You claim that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. In the alternative, you contend that the department is not required to provide the requestor with free access to the requested information. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.¹

You claim that the information at issue is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 550.065(c) of the Transportation Code.² Section 550.065(b) provides that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b).

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

Section 550.065(c)(4) provides for the 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). Under this provision, the DPS or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *See id.* In this case, we find that the requestor has provided the department with two of the pieces of information required under section 550.065(c)(4). Accordingly, we conclude that the department may not withhold from disclosure any portion of the information at issue pursuant to section 552.101 of the Government Code in conjunction with section 550.065(c)(4) of the Transportation Code.

However, you also claim that the information at issue is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 38.18 of the Penal Code. Section 38.18 provides in pertinent 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 [(the "DPS")] 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 state that because section 38.18 prohibits persons from obtaining confidential information in accident reports and using such information for direct solicitation of businesses or for pecuniary gain, the “legislation does not consider accident reports to be public information in the strictest sense, or that a City should devote its resources to enable a mass distribution of accident information.” When a governmental body receives a request for information, it may not inquire into the purpose for which the information will be used. *See* Gov’t Code § 552.222(a), (b). Furthermore, although section 38.18 criminalizes the use of information obtained from DPS 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, section 38.18 specifically contemplates the release of the three types of information listed in subsection (a) to a requestor. Accordingly, we conclude that the department may not withhold the information at issue from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 38.18 of the Penal Code.

You also claim that the information at issue is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 730 of the Transportation Code. Section 730.004 prohibits the release of “personal information” about any person obtained in connection with a motor vehicle record by an agency that maintains or compiles motor vehicle records, except in limited circumstances. However, a “motor vehicle record” and “personal information” as defined in chapter 730 specifically do not encompass information that is contained in an accident report that is prepared under chapter 550 or 601 of the Transportation Code. *See* Transp. Code §§ 730.003(4)(B), (6)(B). Therefore, chapter 730 of the Transportation Code is not applicable in this instance. Accordingly, we conclude that the department may not withhold from disclosure any portion of the information at issue pursuant to section 552.101 of the Government Code in conjunction with chapter 730 of the Transportation Code.

We note that the information that you submitted to us for review indicates that the department also claims that the information at issue is excepted from disclosure pursuant to section 552.130 of the Government Code. However, exceptions to disclosure contained within the Public Information Act (the “PIA”) do not, as a general rule, apply to information made public by other statutes. *See* Open Records Decision No. 525 (1989). The information at issue constitutes accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064. Access to accident reports completed pursuant to chapter 550 is governed by law other than the PIA, specifically section 550.065 of the Transportation Code. Accordingly, we conclude that the department may not withhold from disclosure any portion of the information at issue pursuant to section 552.130 of the Government Code.

Finally, you state that the requestor does not seek copies of the accident reports, but rather only access to them so that he can use his own equipment to make copies of the reports. Section 550.065(c)(4) of the Transportation Code only entitles the requestor in this instance to a copy of the accident reports at issue. *See* Transp. Code § 550.065(c)(4). The Transportation Code also specifies the costs associated with these copies. *See id.* § 550.065(d); *see also* Gov't Code § 552.262(a) (Texas Building and Procurement Commission establishes charges for copies "except to the extent that other law provides for charges for specific kinds of public information"). Accordingly, we conclude that section 550.065(c)(4) of the Transportation Code requires the department to provide the requestor with a copy of the requested accident reports and must provide the copies at the statutorily-mandated cost. Section 550.065(c)(4) does not require the department to give the requestor access to the accident reports so that the requestor can use his own equipment to make the copies.

In summary, the department must provide the requestor in this instance with copies of the requested accident reports at the statutorily-mandated costs.

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).

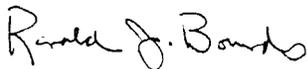
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 168020

Enc. Submitted documents

cc: Texas Free Press
2213 Paradise Road
Las Vegas, Nevada 89104
(w/o enclosures)