ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2003

Mr. Steven M. Kean
Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR2003-8601

Dear Mr. Kean:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192159.

The Tyler Police Department (the "department") received a request for a list of state accident reports relating to accidents that occurred in the City of Tyler from September 11, 2003 to September 16, 2003. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You argue that the requested information is confidential under section 550.065(b) of the Transportation Code. Section 550.065 provides in pertinent part:

> (a) This section applies only to information that is held by [the Texas Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under this chapter or Section 601.004 [of the Transportation Code].

> (b) Except as provided by Subsection (c), the information is privileged and for confidential use of:
>
> > (1) the [Texas Department of Public Safety]; and
> >
> > (2) an agency of the United States, this state, or a local government of this state that has use for the information for accident prevention purposes.

Transp. Code § 550.065(a)-(b). 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. Transp. Code § 550.065(c)(4). Under this provision, the Texas Department of Public Safety 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. *Id.*

You claim that because the requestor has not provided two or more of the specified pieces of information in relation to the relevant accidents, the department is required to withhold the information contained in the responsive accident report list that pertains to motor vehicle accidents. We disagree. Initially, we note that as amended by the Seventy-fifth Legislature in section 13 of Senate Bill No. 1069, section 550.065(a) previously provided as follows:

> (a) This section applies only to information that is held by the [Texas Department of Public Safety] or another governmental entity and relates to a motor vehicle accident, including:
>
> > (1) information reported under this chapter, Section 601.004, or Chapter 772, Health and Safety Code;
> >
> > (2) information contained in a dispatch log, towing record, or a record of a 9-1-1 service provider; and
> >
> > (3) the part of any other record that includes information relating to the date of the accident, the name of any person involved in the accident, or the specific location of the accident.

See Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582. The prior version of section 550.065 was held to be unconstitutional, however, 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). Among other things, the court concluded that the prior

version of section 550.065 "impose[d] a wholesale ban on information that has traditionally been public[.]" *See id.* (Findings of Fact and Conclusions of Law entered January 24, 2001).

The Seventy-seventh Legislature enacted the present language of section 550.065(a) in House Bill No. 1544. *See* Act of May 25, 2001, 77th Leg., R.S., ch. 1032, § 5, 2001 Tex. Gen. Laws 2281, 2282. The legislative history of House Bill No. 1544 reflects that the legislature intended to correct the deficiencies that caused the court to invalidate the previous version of the statute. Hearings on Tex. H.B. 1544 before the Senate Committee on State Affairs, 77th Leg. R.S. (May 10, 2001); *see also* Open Records Decision No. 643 at 2 (1996) (citing *Acker v. Texas Water Comm'n*, 790 S.W.2d 299 (Tex. 1990)) (legislature is presumed to have enacted a statute with complete knowledge of and reference to existing law). Furthermore, there is no legislative indication that the current section 550.065 was intended to encompass any records other than those prepared in accordance with chapter 550 or section 601.004 of the Transportation Code. Hearings on Tex. H.B. 1544; *see also* Open Records Decision No. 643 at 2-3 (citing *Buckner Glass & Mirror, Inc. v. T.A. Pritchard Co.*, 697 S.W.2d 712 (Tex. App.--Corpus Christi 1985, no writ)) (when legislature amends a law, it is presumed to have intended to change the law). Accordingly, because the submitted record does not constitute an accident report form completed pursuant to chapter 550 or section 601.004 of the Transportation Code, we conclude that the submitted accident information is not made confidential by section 550.065. Thus, it may not be withheld under section 552.101 of the Government Code, and it must be released.

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 Dep't of Pub. 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,

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 192159

Enc. Submitted document

c: The Claims Assistance Center
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(w/o enclosures)