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SEP 23 2002
OPINION COMMITTEE Mike Stafford
Harris County Attorney

September 17, 2002

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Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-42806-02
I.D. # 42806

SEP 23 2002
OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

Re: Calculation of proper fee for non-certified copies of motor vehicle
accident reports.
C.A. File No. 01GEN1141.

S.G.

RQ-0611-JC

Dear General Cornyn:

Pursuant to section 402.043 of the Government Code, we respectfully request an opinion on whether section 550.065(d) of the Transportation Code requires governmental agencies to use the guidelines established by the General Services Commission when calculating the "actual cost" of making a copy of a non-certified copy of an accident report. Section 550.065(d) does not define "actual cost" and does not indicate how "actual cost" is to be determined. Due to the varying interpretations, please provide us an opinion in this matter. A Memorandum Brief is attached.

Sincerely,

MIKE STAFFORD
County Attorney

By: Melissa L. Barloco
MELISSA L. BARLOCO
Assistant County Attorney

Approved:

John R. Barnhill
JOHN R. BARNHILL
First Assistant County Attorney

MEMORANDUM BRIEF

In the 77th legislative session H.B. 1544 was passed, amending section 550.065(d) of the Transportation Code, effective September 1, 2001, changing the fee that may be charged for accident reports. TEX. TRANSP. CODE ANN. § 550.065(d) (Vernon Supp. 2002). Section 550.065(d) provides:

The fee for a copy of the report or accident information is \$6 or the actual cost of the preparation of the copy, whichever is less. The copy may be certified by the department or the governmental entity for an additional fee of \$2. The department or the governmental entity may issue a certification that no report or information is on file for a fee of \$6.

TEX. TRANSP. CODE ANN. § 550.065(d) (Vernon Supp. 2002). [Emphasis added]. The statute does not define “actual cost” or indicate how “actual cost” is to be determined.

The General Services Commission establishes rules for governmental entities to use in determining charges for public information. Section 552.262(a) provides:

The General Services Commission shall adopt rules for use by each governmental body in determining charges for providing copies of public information under this subchapter and in determining the charge, deposit, or bond required for making public information that exists in a paper record available for inspection as authorized by Sections 552.271(c) and (d). The rules adopted by the General Services Commission shall be used by each governmental body in determining charges for providing copies of public information and in determining the charge, deposit, or bond required for making public information that exists in a paper record available for inspection, except to the extent that other law provides for charges for specific kinds of public information. The charges for providing copies of public information may not be excessive and may not exceed the actual cost of producing the information or for making public information that exists in a paper record available. A governmental body, other than an agency of state government, may determine its own charges for providing copies of public information and its own charge, deposit, or bond for making public information that exists in a paper record available for inspection but may not charge an amount that is greater than 25 percent more than the amount established by the General Services

Commission unless the governmental body requests an exemption under Subsection (c).

TEX. GOV'T CODE ANN. § 552.262(a) (Vernon Supp. 2002) [Emphasis added]. Thus, governmental bodies are required to use the rules of the General Services Commission when providing copies of public documents, except to the extent another statute provides the fee to be charged for specific information.

Before the amendment to section 550.065 of the Transportation Code, the charge for an uncertified copy of an accident report was a flat fee of \$4 and the fee schedule created by the General Services Commission did not apply. *See* TEX. TRANSP. CODE ANN. § 550.065(e) (Vernon 1999). However, section 550.065, as amended, does not increase the fee to \$6, but provides that the fee is "\$6 or the actual cost of the preparation of the copy, whichever is less." Now, governmental entities may not simply charge \$6, but must determine the actual cost of providing the copy of the accident report. Actual cost is not defined in the statute. Section 550.065 of the Transportation Code provides a different charge than section 552.262 of the Government Code only to the extent that the fee for motor vehicle accident reports cannot exceed \$6, even if the actual cost exceeds that amount. Arguably, actual cost may be determined as provided in section 552.262 of the Government Code.

Persons overcharged for copies of public documents may complain to the General Services Commission and collect three times the amount of the overcharge from the offending governmental body. *See* TEX. GOV'T CODE ANN. § 552.269(a) (Vernon Supp. 2002). For that reason, the Attorney General recommends that governmental entities contact the Open Records Administrator for the General Services Commission if questions exist regarding the costs of providing copies of accident reports. *See* Tex. Att'y Gen. OR2001-3939. The Harris County Attorney contacted the Open Records Administrator, who advised that the actual cost of providing copies of accident reports should include only the cost of making the copy, since law enforcement agencies are already required to write and file accident reports. Harris County has adopted the fee of \$.10 per page as set by the General Services Commission. Accordingly, the actual cost of non-certified copies of motor-vehicle accident reports would be \$.10 per page, not exceeding \$6 per report.

On the other hand, a review of the fiscal notes of the engrossed version of H.B. 1544 indicates a legislative intent to increase the fee from \$4.00 to \$6.00. The fiscal notes provide in pertinent part:

Currently the fees for accident records and accident report searches showing no record are \$4 for the search and either \$4 or \$6 depending on whether the accident record is certified or non-certified. The bill would increase the charge for the search and non-certified record to \$6, and the charge for a certified record to \$8.

FISCAL NOTE, Tex. H.B. 1544, 77th Leg., R.S. (2001). However, the fiscal notes do not explain the qualifying language in section 550.065(d) of the Transportation Code: “The fee for a copy of the report or accident information is \$6 or the actual cost of the preparation of the copy, whichever is less.” Apparently, the assumption made in the fiscal notes was that the actual cost would be at least \$6. If so, then the addition of the qualifying language was not necessary. Furthermore, the fiscal notes do not support the interpretation that the \$.10 a page standard set by the General Services Commission was intended, since the length of most accident reports is one page and would generate a fee of \$.10.