



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Mr. George A. Staples, Jr.
City Attorney
City of Hurst
701 Texas Commerce Bank Building
860 Airport Freeway West
Hurst, Texas 76054

OR95-1544

Dear Mr. Staples:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37215.

The City of Hurst (the "city") received an open records request for police dispatch records reflecting all calls for service within a 24 hour period. You seek to withhold the requested records pursuant to sections 552.101 and 522.108 of the Government Code.

You first suggest that the requested information is made confidential "by implication" by recent amendments to section 47 of V.T.C.S. article 6701d, and thus must be withheld from the public pursuant to section 552.101 of the Government Code. Section 552.101 excepts from disclosure information considered to be confidential under statutory law. In the recent legislative session, the legislature enacted House Bill 391, which places certain restrictions on the general public's access to "all *accident reports* made as required by [V.T.C.S. art. 6701d] or [V.T.C.S. art. 6701h]."¹ (Emphasis added.) See Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413 (Vernon).

¹Effective September 1, 1995, these statutes were repealed and replaced as part of the Transportation Code. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Sess. Law Serv. 1025, 1870-71 (Vernon). The legislature did not intend a substantive change of the law but merely a recodification of existing law. *Id.*, § 25, 1995 Tex. Sess. Law Serv. at 1871.

Specifically, House Bill 391 provides that a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request *only* to, among others, a person who provides the law enforcement agency with two or more of the following: (1) the date of the accident, (2) the name of any person involved in the accident, or (3) the specific location of the accident. *Id.* House Bill 391, however, specifically applies only to "accident reports" required by article 6701d, V.T.C.S., or article 6701h, V.T.C.S. House Bill 391 is therefore inapplicable to the requested dispatch records. *See* Open Records Decision No. 478 (1987) (as a general rule, statutory confidentiality requires express language making particular information confidential).²

You also contend that "[t]here is a significant privacy interest of those persons who call the Police or Fire Department from being subjected to public or private scrutiny." Section 552.101 also protects information the release of which would sustain a common-law tort action for invasion of privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

However, it is well established that the identity of "complainants" who request assistance from police departments is generally public information. *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.-Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 409 (1984) (names of burglary victims not "highly intimate or embarrassing" and therefore not ordinarily excepted by common law privacy). *But see* Open Records Decision No. 339 (1982) (common law privacy protects name of victim serious sexual offense). Absent a demonstration to this office that a particular individual's identity is protected by common-law privacy, the city may not withhold any of the requested information on privacy grounds.

Finally, you argue that the requested information may be withheld from the public pursuant to the "law-enforcement exception," section 552.108. Section 552.108 excepts records from required public disclosure only where the release of the information would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986), 287 (1981). When this section is raised, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how the release of the information would unduly interfere with law enforcement. Open

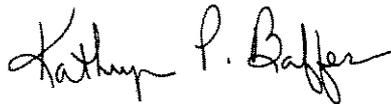
²You characterize the open records request as "a transparent attempt to subvert the new law." Please note that section 552.222 of the Government Code prohibits the inquiry by the governmental body into the motives of the person applying for inspection or copying of records. *See* Open Records Decision No. 542 (1990). Consequently, the requestor's motives for obtaining the requested records are not relevant to an analysis as to whether the records are subject to required public disclosure.

Records Decision No. 287 (1981). Whether disclosure of particular records will unduly interfere with law enforcement must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). You have not demonstrated, nor is it apparent from the face of the documents you submitted to this office, how the release of this information would unduly interfere with law enforcement.

We further note that in Open Records Decision No. 394 (1983), this office determined that there was no qualitative difference between the information contained in police dispatch records and that which was expressly held to be public in *Houston Chronicle, supra*. See also Open Records Decision No. 127 (1976) (summarizing holding in *Houston Chronicle*). Similarly, we conclude that none of the requested information may be withheld pursuant to section 552.108. The city therefore must release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/RWP/rho

Ref.: ID# 37215

Enclosures: Submitted documents

cc: Mr. Bob Wismer
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(w/o enclosures)