



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 21, 1995

Mr. Mark E. Dempsey  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR95-1559

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37239.

The City of Garland (the "city") received a request for daily access to the city police department's Daily Call for Service Report.<sup>1</sup> You contend that the requested information is excepted from required public disclosure under section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You suggest that this office apply the same legal analysis to the dispatch records as that used by the court in *Direct Mail Marketing, Inc. v. Morales*, No. H-95-4234 (S.D. Tex. Oct. 5, 1995). In *Direct Mail Marketing, Inc.*, the court addressed the constitutionality of House Bill 391, which places certain restrictions on public access to "all accident reports made as required by [V.T.C.S. art. 6701d] or [V.T.C.S. art. 6701h]." See Act of May 27, 1995, 74th Leg., R.S., ch. 894, 1995 Tex. Sess. Law Serv. 4413 (to be codified as amendment to V.T.C.S. art. 6701d, § 47). The court held that the proposed amendment to article 6701d was not unconstitutional and thus denied the application for a preliminary injunction against enforcement of the amendment.

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<sup>1</sup>We agree with your contention that the Open Records Act does not require a governmental body to comply with a standing request for information to be collected or prepared in the future. See Attorney General Opinion JM-48 (1983). However, because there is nothing to prevent the requestor from making daily requests for newly created dispatch logs, we will rule on the records you have submitted to this office as being representative of the types of records the requestor may seek in the future.

However, House Bill 391 restricts public access only to certain accident reports, and not to police dispatch logs such as those at issue here. Consequently, the court ruling in *Direct Mail Marketing, Inc.*, has no bearing on whether the public may have access to the type of records being sought by the requestor. Moreover, 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 information are not relevant to an analysis as to whether the information is subject to required public disclosure.

You also contend that release of the requested information is an invasion of privacy. 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You have not explained how the limited type of information contained in the dispatch records would meet this test. See Open Records Decision Nos. 440 (1986) (investigations regarding sexual abuse of children excepted under common-law privacy), 422 (1984) (attempted suicide, since not criminal offense, is more like "emotional/mental distress" than it is like homicide, and therefore, legitimate public interest in disclosure is less), 393 (1983) (identifying information of victim of serious sexual offense excepted under common-law privacy), 339 (1982) (detailed description of aggravated sexual abuse raises issue of common-law privacy; name of victim of serious sexual offense excepted under common-law privacy). *But see* Open Records Decision No. 611 (1992) (common-law privacy does not, as matter of law, except all records concerning violence among family members; determination must be made on case-by-case basis). After reviewing the records submitted to this office, we conclude that none of the information contained in these records may be withheld under common-law privacy without additional briefing. See Open Records Decision No. 394 (1983) at 4 ("Questions relating to the application of the common law right of privacy are necessarily factual in nature and can only be resolved on a case-by-case basis.").

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 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. 127 (1976) (summarizing holding in *Houston Chronicle Publishing Co.*).

However, any dispatch information involving "delinquent conduct" or "conduct indicating a need of supervision" of a juvenile must be withheld from the general public pursuant to section 51.14(d).<sup>2</sup> See also Fam. Code § 51.14(c) (stating that all "law-enforcement files and records concerning a child shall be kept separate from files and records of arrests of adults").<sup>3</sup> But see *id.* § 51.03 (excluding information pertaining to routine juvenile traffic violations from confidentiality provisions).

Furthermore, information concerning investigations into the abuse or neglect of a child is made confidential by law. Act of May 26, 1995, 74th Leg., R.S., ch. 751, § 93, 1995 Tex. Sess. Law Serv. 3888, 3924 (to be codified as Fam. Code § 261.201(a)). Accordingly, any information concerning an investigation into the abuse or neglect of a child is confidential and must be withheld from public disclosure.

Finally, we note that the requestor notes that if the requested information is available for viewing he wishes "to use [his] own photocopier." A governmental body may refuse to allow the public to duplicate records with portable equipment when it is unreasonably disruptive of working conditions, or when the records contain confidential information, or when safety or efficiency factors [including fire hazard and noise] are at issue. Attorney General Opinion JM-757 (1987). If a governmental body prohibits a requestor from using his own machine to copy records, it must itself provide copies of the records. *Id.*

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,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>We note that in the recent legislative session, the Seventy-fourth Legislature repealed section 51.14 of the Family Code, effective January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 100, 105, 106, 1995 Tex. Sess. Law Serv. 2517, 2590-91 (Vernon). We do not address the effect of the legislature's action on requests made after January 1, 1996.

<sup>3</sup>We do not address here whether juvenile and adult dispatch information may properly be recorded together.

SES/LBC/rho

Ref: ID# 37239

Enclosures: Submitted documents

cc: Mr. Bob Wismen  
4311 Stella Court  
Arlington, Texas 76017  
(w/o enclosures)