



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 10, 1996

Ms. Tracy B. Calabrese  
Assistant City Attorney  
Legal Department  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR96-0009

Dear Ms. Calabrese:

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# 36549.

The City of Houston (the "city") received a request for the city police department's daily calls for service report. You believe that portions of this report are made confidential by the recent enactment of House Bill 391 and therefore must be withheld from the general public pursuant to section 552.101 of the Government Code. You have submitted documents that are responsive to this request for our review.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. 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]."<sup>1</sup> Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413 (Vernon) (emphasis added). 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.*

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<sup>1</sup>Effective September 1, 1995, these statutes were repealed and replaced as part of the Transportation Code.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.

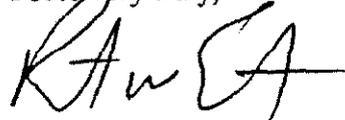
House Bill 391, however, specifically applies only to "accident reports" contemplated by article 6701d, V.T.C.S., or article 6701h, V.T.C.S. House Bill 391 is therefore inapplicable to the requested "Calls for Service and Accident Report Index." See Open Records Decision No. 478 (1987) (as a general rule, statutory confidentiality requires express language making particular information confidential).

You express concern that "several direct mailing companies are attempting to circumvent" the intent of House Bill 391 and the court's decision in *Direct Mail Marketing, Inc. v. Morales*, No. H-95-4234 Civ. 1995 (S.D. Tex. Oct. 5, 1995)<sup>2</sup> by making similar open records requests to the city. 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, those requestors' motives for obtaining these types of records are not relevant to an analysis as to whether the records are subject to required public disclosure.

You have not demonstrated that the requested records are excepted from required public disclosure. Accordingly, the city 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 under section 552.301<sup>3</sup> regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Robert W. Schmidt  
Assistant Attorney General  
Open Records Division

RWS/ch

Ref: ID# 36549

Enclosures: Submitted documents

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<sup>2</sup>In *Direct Mail*, the court addressed the constitutionality of House Bill 391. 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. However, as noted above, House Bill 391 restricts public access only to certain accident reports, and not to police dispatch records such as those at issue here. Consequently, the court's ruling in *Direct Mail* has no bearing on whether the public may have access to the type of records being sought by the requestor.

<sup>3</sup>Act of May 29, 1995, 74th Leg., R.S., ch. 1035, §18, 1995 Tex. Sess. Law Serv. 5127, 5139.

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