



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 9, 1996

Ms. Annette Jones  
Police Legal Advisor  
Legal Services  
P.O. Box 2570  
Waco, Texas 76702-2570

OR96-0162

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your requests ID# 37593, ID# 38006, and ID# 38128.

The Waco Police Department (the "Department") received three requests for certain information within the Department's daily dispatch logs.<sup>1</sup> You contend the requested information is excepted from required public disclosure under sections §552.101, 552.103 and 552.108 of chapter 552 of the Government Code.

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>2</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>Although the letters from the requesters ask for the department's daily "dispatch log," you indicate in your letter to our office that the document responsive to the requests, a daily summary of dispatch calls, is called a "Daily Summary Sheet." You also state that in conversations with one of the requesters, the requester indicated that he is not interested in information on calls other than those which relate to traffic accidents.

<sup>2</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Effective September 1, 1995, these statutes were repealed and replaced as part of the Transportation Code.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. As a daily log of dispatch calls (the Daily Summary Sheet) is distinct from "accident reports" that are addressed in House Bill 391, this law does not apply to the requested Daily Summary Sheet. See Open Records Decision No. 478 (1987) (as a general rule, statutory confidentiality requires express language making particular information confidential).

You state that one of the requesters has indicated that he intends to use the requested Daily Summary Sheet to gain information that will enable him to obtain accident reports. You express concern that the requester will thus "circumvent the intent of House Bill 391." 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 requester's motives for obtaining these records are not relevant to an analysis as to whether the records are subject to required public disclosure. *Id.*

Next, you contend that the requested information should be withheld under section 552.103. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. See generally Open Records Decision No. 551 (1990). In this instance, you have not made the requisite showing that the requested information relates to pending or reasonably anticipated litigation for purposes of section 552.103(a).

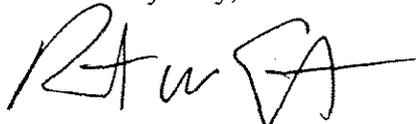
You also contend that the information is excepted under section 552.108. When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See generally *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); Open Records Decision No. 127 (1976). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how its release would unduly interfere with law enforcement or crime prevention. Open Records Decision No. 434 (1986) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2.

Regardless of whether the information on the Daily Summary Sheet relates to active criminal investigations or closed investigations, this office held in Open Records Decision No. 394 (1983) that there was no qualitative difference between the information contained in police dispatch records and the first page offense report information, 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*). Similarly, based on the information and facts that you have presented us, we conclude that none of the requested information on the Daily Summary Sheet may be withheld pursuant to section 552.108.

Finally, you express concern that information on the Daily Summary Sheet may be used to identify the victims of sexual assault, possible police informants and witnesses, and juvenile runaways, thus implicating privacy or law enforcement interests. You state, however, that one of the requesters has indicated that he is seeking only information relating to traffic accidents.<sup>3</sup> You further state that "there are ways to provide listings for a specific types [sic] of call, such as traffic accidents . . . ." Because you indicate that you have the capability to separate specific types of calls and because at least one requester has indicated that he only seeks information on calls relating to traffic accidents, it may be unnecessary for you to provide information relating to non-traffic accident calls. Furthermore, you state that the daily summary of dispatch calls has very limited information relating to a specific call. You state that other documents, such as a police report or a "call history printout," reveal more detailed information that might implicate privacy or law enforcement interests. In the requests at issue, however, the requesters are seeking only information on the Daily Summary Sheet and have not asked for any additional information that would implicate privacy or law enforcement interests. Moreover, you have not provided this office with sufficient information to determine that any of the information on the sample Daily Summary Sheets is excepted from disclosure.<sup>4</sup> We note however, that section 552.352 of the Government Code prohibits the release of information that is confidential by law. *See e.g.* Open Records Decision No. 393 (1983) (information which identifies or would tend to identify victim of serious sexual offense may be withheld under common law privacy).

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,



Robert W. Schmidt  
Assistant Attorney General  
Open Records Division

RWS/ch

Ref.: ID#s 37593, 38006, 38128

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<sup>3</sup>Another requester states in his request letter that he does "not object to the deletion of any information that might compromise ongoing police criminal investigations or other data specifically protected by present exemptions to the Open Records Act."

<sup>4</sup>You provided our office with a call history printout which indicates that one person whose call is documented on the sample Daily Summary Sheet "does not want to be contacted by officers." This statement by the caller and the information provided by the city does not support a finding that the information on the Daily Summary Sheet regarding this caller is excepted from required public disclosure.

Enclosures: Submitted documents

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