



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 2, 1996

Mr. John Steiner
Division Chief, Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR96-0652

Dear Mr. Steiner:

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# 39731 under which we are consolidating another similar request assigned ID# 37772.

The City of Austin (the "city") received a request for a copy of "calls made for the dispatch code of '1050' (which is also known as the call complaint code of '3600')." Although the requestor indicates that in the future he will be requesting the information on a daily basis for the previous day's dispatch records, we shall address only the information before us.¹ You have submitted a representative sample for our review and you contend the requested information is excepted from required public disclosure under 552.101 and 552.108 of the Government Code.²

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,

¹A governmental body is not required to comply with a continuing request to supply information on a periodic basis. Attorney General Opinion JM-48 (1983); Open Records Decision No. 476 (1987). Additionally, Chapter 552 does not require a governmental body to comply with a standing request for information to be collected or prepared in the future. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.--San Antonio 1978, writ dismissed).

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the legislature amended article 6701d, V.T.C.S., in House Bill 391 to provide 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 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. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413. This act, however, applies only to "accident reports" required by article 6701d, V.T.C.S., or by article 6701h, V.T.C.S.³ Section 550.064 of the Transportation Code, formerly part of article 6701d, provides that the Texas Department of Transportation shall prepare and, upon request, supply accident report forms to suitable agencies or individuals. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 1, 1995 Tex. Sess. Law Serv. 1025, 1694-95 (to be codified as Transp. Code § 550.064). The statute sets out the information that must be included in those forms. *Id.* As the records for calls made for the dispatch code of '1050,' also known as the call complaint code of '3600,' do not fall within the definition of "accident reports" that are addressed in House Bill 391, this law does not apply to the requested information.

You also contend in the request assigned ID# 37772 that section 552.108 of the Government Code excepts the submitted information from required public disclosure. Section 552.108 excepts from required public disclosure all information related to cases under active investigation except certain basic information ordinarily appearing on the first page of an offense report and in other records of law-enforcement agencies relating to arrests. *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). Although information not excepted from disclosure by section 552.108 is at times described by its location, the location of the information or the label placed on it is not determinative of its status under section 552.108. Open Records Decision No. 394 (1983) at 3. The fact that the code refers to collision cases does not close up information deemed public. Additionally, section 552.108(b) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution" This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When section 552.108(b) is claimed, the agency

³Effective September 1, 1995, these statutes were repealed and replaced with the Transportation Code. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Sess. Law Serv. 1025, 1870-71. 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. However, the Seventy-fourth Legislature also without reference to its repeal amended section 47 of article 6701d, V.T.C.S. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414. The repeal of a statute by a code does not affect an amendment of the statute by the same legislature that enacted the code. Gov't Code § 311.031. Accordingly, the amendment to section 47 is preserved and given effect as part of the Transportation Code. *Id.* Section 47, V.T.C.S. article 6701d, is the statutory predecessor of Transportation Code section 550.065, and its amendment is the current law.

claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3.

We have examined the records submitted for our review. The dispatch records contain information deemed public by the *Houston Chronicle* court. See Open Records Decision No. 394 (1983). Moreover, you do not explain how the release of the requested information would unduly interfere with law enforcement. Therefore, the city may not withhold the requested information under either section 552.101 or section 552.108 of the Government Code and must release the information to the requestor.

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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 39731
ID# 37772

Enclosures: Submitted documents

cc: Mr. Kevin D. McCarter
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(w/o enclosures)