



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 8, 1996

Mr. David M. Berman
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR96-0675

Dear Mr. Berman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38197.

The City of Balch Springs (the "city") received a request for the "dispatch log maintained by the Police Department Records Office." You contend that the requested information is excepted from required public disclosure under sections 552.101 and 552.108 of the Government Code.

You inform this office that the city does not maintain a "dispatch log" but does maintain a record of all 911 calls that are received, including "the name, phone number and address of the person who placed the call, the ID numbers of the dispatcher who took the call and the police officers dispatched to the scene, the time the call was received and responded to, and comments relating to the situation." We assume for purposes of this ruling that the information at issue was not obtained from an emergency 911 district established in accordance with the provisions of chapter 772 of the Health and Safety Code.¹

Section 552.108 provides that:

¹This office is currently considering in RQ-838 whether the originating telephone numbers and addresses obtained by a 911 districts' use of a telephone service supplier's database is confidential by law under section 772.318 of the Health and Safety Code in conjunction with section 552.101 of the Government Code.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An 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 is excepted from [required public disclosure].

Section 552.108 is designed to protect law enforcement interests. See Open Records Decision No. 252 (1980). Subsection (a) excepts from disclosure certain information relating to both open and closed criminal investigations. Subsection (b) 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)).

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, any proper custodian of information which relates to the incident may invoke section 552.108. Open Records Decision Nos. 474 (1987), 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *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) at 3-4 (listing factual information available to public). We stress, however, that it is the type of information that is determinative, not the location of the information on the literal "first page" of an offense report.

After a file has been closed, either by prosecution or by administrative decision, the availability of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982). The test for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108(a) or whether information is excepted under subsection (b) is whether release of the records would unduly interfere with the prevention of crime and the enforcement of the law. Open Records Decision Nos. 636 (1995) at 2, 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

You claim that the requested information is excepted under section 552.108 because "the documents constitute internal records of a law enforcement agency maintained for internal use in matters relating to law enforcement," the caller is a potential witness, the comment section constitutes the initial factual basis upon which the responding officers will act, and the disclosure of the identity of the responding officer and the dispatcher "is a tacit disclosure of potential witnesses." To claim section 552.108 for

voluminous information that does not explain on its face how its release would unduly interfere with law enforcement and crime prevention, a governmental body must (1) mark the information it claims would tend to identify a confidential informant or would unduly interfere with law enforcement and crime prevention if released, and (2) detail how release of that marked information would identify the informant or unduly interfere with law enforcement. Open Records Decision No. 636 (1995) at 4. The type of generalized explanation you have provided is insufficient. *Id.* Moreover, in reviewing the representative sample, we have determined that the information on its face is the type of information deemed public by the *Houston Chronicle Publishing Co.* case. See Open Records Decision No. 394 (1983). Accordingly, you may not withhold the requested information under section 552.108 of the Government Code.

You also claim that portions of the requested records may be withheld under section 552.101 as information deemed confidential by law or under common-law privacy. However, the information you submitted as representative of the requested information does not demonstrate on its face that it implicates the confidentiality statute you raised,² nor does the information implicate the doctrine of common-law privacy.³ We cannot make a determination concerning the applicability of section 552.101 concerning the information you did not submit for our review. Accordingly, unless the requestor has no objections to the city withholding the alleged juvenile offender information or the information the city claims is excepted by common-law privacy, you may not withhold the requested information under section 552.101 without submitting the *specific* records the city claims are excepted under section 552.101 to this office for a determination. See *generally* Open Records Decision Nos. 499 (1988) (if documents are numerous and repetitive, a governmental body should submit representative sample, *but if each contains substantially different information, all must be submitted*), 497 (1988) (fact that submitting copies for review to Attorney General may be burdensome does not relieve governmental body of responsibility of doing so).

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

²Moreover, the Family Code was substantially amended by the Seventy-fourth Legislature including the repeal of section 51.14. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590. However, the amendments to the Family Code apply only to conduct that occurs on or after January 1, 1996. *Id.* § 106, 1995 Tex. Sess. Law Serv. at 2591. "Conduct that occurs before January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose." *Id.* Whether the current laws governing the release of juvenile offender information provide confidentiality for information maintained by law enforcement agencies for offenses committed on or after January 1, 1996 is currently being considered by this office in a pending open records decision, designated as ORQ-6.

³We note that an individual generally does not have a privacy interest in their home phone number or address. Open Records Decision No. 455 (1987).

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta DeHay
Assistant Attorney General
Open Records Division

LRD/LBC/cbh

Ref: ID# 38197

Enclosures: Submitted documents

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