



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 18, 1995

Mr. Donald W. Allee
Law Offices of Donald W. Allee
801 Nolana, Suite 315
McAllen, Texas 78504

OR95-1430

Dear Mr. Allee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.¹ Your request was assigned ID# 37049.

The City of Pharr Police Department (the "department") received an open records request for "routine, on-going, access to the police department's daily dispatch logs." You have submitted to this office a sample log sheet.² You state that it would be "impossible" for the department to provide access to the information, as the log sheets "are in constant use, 24 hours per day, seven days per week." You also assert that the information at issue is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

We disagree with your contention that the department is unable to allow public access to the daily log sheets. The log sheets at issue are "public information" subject to

¹We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (to be codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.*

²We assume that the sample log submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision No. 499 (1988), 497 (1988)*. Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

chapter 552 because they are collected, assembled, or maintained in connection with the transaction of official business. Gov't Code § 552.002. Governmental bodies are required to make public information available to the public. See Gov't Code § 552.221. If the information is unavailable at the time of request because it is in active use, this must be certified in writing and a time and place set when the information is available for inspection or duplication. *Id.*

Chapter 552 does not prohibit a governmental body from voluntarily complying with a standing request for information. However, neither does chapter 552 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 each day's newly created dispatch log, this office will address your arguments concerning the applicability of sections 552.101 and 552.108 to the department's daily log sheets.

Section 552.108 excepts records from required public disclosure only where release of the information would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986), 287 (1981). The governmental body claiming the exception must reasonably explain, if the information does not supply the explanation on its face, how release of the records would unduly interfere with law enforcement. Open Records Decision No. 287 (1981). However, you have not demonstrated, nor is it apparent from the face of the submitted log sheet, how release of this information would unduly interfere with law enforcement.

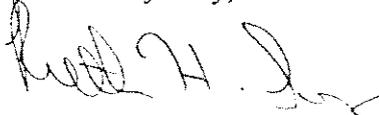
Also, in Open Records Decision No. 394 (1983), this office determined that there was no qualitative difference between the information contained in police dispatch records and that which was expressly held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. 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*). We conclude that the requested information may not be withheld from disclosure pursuant to section 552.108.

Section 552.101 excepts from disclosure information "considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information must be withheld from disclosure under a common-law right of privacy if the information is highly intimate or embarrassing and if it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W. 2d 668, 682 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 328 (1982). You have not explained how the limited type of information contained in the daily log sheets would meet this test. Our review of the log sheet submitted to this office indicates that none of the information may generally be withheld under common-law privacy without more briefing on this issue. However, if any of the entries of the log sheets at issue meet the common-law privacy test, you should explain to this office how they meet the test and specifically mark those entries. See Open Records Decision No. 394 (1983) at 4.

Also, if any of the log sheets reflect information involving delinquent conduct or conduct indicating a need for supervision, that information is confidential pursuant to section 51.14(d) of the Family Code.³ This information may not be released to the general public. *But see* Fam. Code § 51.03 (excluding information pertaining to routine juvenile traffic violations from confidentiality provisions).

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 37049

Enclosures: Submitted documents

cc: Mr. Larry J. Laurent
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(w/o enclosures)

³We note that in the recent legislative session, the 74th 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 in this ruling the effect of the legislature's action on requests made after January 1, 1996.

See also Fam. Code § 51.14(c) (requiring all "law-enforcement files and records concerning a child shall be kept separate from files and records of arrests of adults"). We do not address here whether juvenile and adult dispatch information may properly be recorded together.

