



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 12, 1996

Mr. David M. Douglas
Assistant Chief, Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0536

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code.¹ Your request was assigned ID# 35525.

The Texas Department of Public Safety ("DPS") received two requests relating to certain information. Specifically the requestor "seeks to receive and/or view in full the Daily Dispatch Call Sheet, Computer Query and/or any other forms that are filled out by the Dispatch Division when a call comes in from the various officers regarding any and all automobile accident reports on a daily basis for" Harris, Montgomery, Galveston, Chambers, and Walker Counties, and any other counties from which it may become necessary to procure such Daily Dispatch Call Sheets or Computer Queries as well as for any and/or all local DPS offices. You state that the station activity logs and communication facility daily reports of the DPS are responsive to the request for information. You contend that the activity logs and facility daily reports are excepted from required public disclosure under section 552.101 of the Government Code as information made confidential by law. You also assert that portions of the requested information are excepted from required public disclosure under sections 552.108 and 552.117 of the Government Code.

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 (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. 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.* The requests at issue were received by DPS before September 1, 1995.

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 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.² 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.* Section 601.004 of the Transportation Code, formerly part of article 6701h, similarly provides for accident report forms to be prepared by DPS. *Id.* 1995 Tex. Sess. Law Serv. at 1705-06. As the activity logs and facility reports 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. Therefore, DPS may not withhold the requested information under section 552.101 of the Government Code.

You also contend that section 552.117 of the Government Code specifically prohibits the release of a peace officer's home address or home telephone number. We agree. Section 552.117(1)(B) provides that you must withhold the home address or home telephone number of a peace officer as defined by article 2.12 of the Code of Criminal Procedure, or a security officer commissioned under section 51.212 of the Education Code. Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 1, 1993 Tex. Gen. Laws 583, 601, *amended by* Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 9, 1995 Tex. Sess. Law Serv. 5127, 5132. You must also withhold the home addresses and telephone numbers of

²Effective 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.

governmental employees³ and the social security numbers of governmental employees and peace officers under certain circumstances.⁴ You may not, however, withhold the home address or telephone number of an official or employee who made the request for confidentiality under section 552.024 after these requests for information were made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

Finally, you contend that the release of the requested information is excepted under section 552.108 of the Government Code. Section 552.108 provides that:⁵

(a) A record of 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 excepts records from required public disclosure only where the release of the information would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986), 287 (1981). Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. 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).

Section 552.108 may also except the internal notations and records of a law enforcement agency or a closed investigation.⁶ However, when this section is raised, the

³See Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 1, 1993 Tex. Gen. Laws at 599, 601 (amended 1995) (former Gov't Code §§ 552.024, .117(1)(A) (together providing that governmental employee's address may be withheld only if employee makes request under § 552.024)).

⁴See Open Records Decision No. 622 (1994) (concluding that social security number is excepted from disclosure under § 552.101 in conjunction with 1990 amendments to federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), only when it is obtained and maintained pursuant to provision of law enacted on or after October 1, 1990).

⁵Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 1, 1993 Tex. Gen. Laws 583, 600 (amended 1995).

agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how the release of the information would unduly interfere with law enforcement. Open Records Decision No. 287 (1981). Whether disclosure of particular records will unduly interfere with law enforcement must be decided on a case-by-case basis.

Therefore, to claim the section 552.108 exception for the requested information, a governmental body must do two things: (1) mark the information it claims would unduly interfere with law enforcement and crime prevention if released, and (2) detail how release of that marked information would unduly interfere with law enforcement. Open Records Decision No. 636 (1995) at 4. Without this information, the governmental body will not have met its burden under section 552.108. A generalized explanation is insufficient; the governmental body's argument must be addressed to the particular records requested or the portions of those particular records for which the governmental body is claiming the section 552.108 exception. Open Records Decision No. 434 (1986).

You state that the release of the location and license number of an undercover federal law enforcement vehicle would unduly interfere with law enforcement and endanger the safety of law enforcement officers. We agree. You may withhold this information under section 552.108 of the Government Code. You have not demonstrated, however, how the release of the remaining information would unduly interfere with law enforcement and crime prevention. The information you submitted as representative of the requested records does not demonstrate on its face how release of the other records would unduly interfere with law enforcement and crime prevention. Moreover, 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.* But see Open Records Decision No. 508 (1988) at 2 (first page offense report type information may be withheld under Gov't Code § 552.108 where governmental body demonstrates that release of specific information would unduly interfere with law enforcement). Accordingly, you must submit the specific information you claim is excepted under section 552.108, mark the information you claim is excepted, and present specific arguments as to how release of the information would unduly interfere with law enforcement and crime prevention. You have fourteen days from receipt of this ruling to submit the marked records with your detailed explanations for withholding the information under section 552.108. If you do not submit the information within the specified time, the information will be presumed to be public and must be released.⁷

⁶After 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); see also Open Records Decision No. 553 (1990) at 4 (test for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108 is whether release of records would unduly interfere with prevention of crime and law enforcement).

⁷We remind you that the release of confidential information is a criminal offense. Gov't Code § 552.352. See Open Records Decision Nos. 440 (1986) (investigations regarding sexual abuse of children excepted under common-law privacy), 422 (1984) (attempted suicide, since not criminal offense,

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/LBC/ch

Ref: ID# 35525

Enclosures: Marked documents

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is more like "emotional/mental distress" than it is like homicide, and therefore, legitimate public interest in disclosure is less), 393 (1983) (identifying information of victim of serious sexual offense excepted under common-law privacy), 339 (1982) (detailed description of aggravated sexual abuse raises issue of common-law privacy; name of victim of serious sexual offense excepted under common-law privacy). *But see* Open Records Decision No. 611 (1992) (common-law privacy does not, as matter of law, except all records concerning violence among family members; determination must be made on case-by-case basis).

Dispatch information involving "delinquent conduct" or "conduct indicating a need of supervision" of a juvenile occurring prior to January 1, 1996, must be withheld from the general public pursuant to former Family Code section 51.14(d), Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Sess. Law Serv. 2517, 2591 (amendments to Fam. Code apply only to conduct that occurs on or after January 1, 1996; "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").

Furthermore, information concerning investigations into the abuse or neglect of a child is made confidential by law. Fam. Code § 261.201(a). Accordingly, any information concerning an investigation into the abuse or neglect of a child is confidential and must be withheld from public disclosure.