



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October, 2006

Mr. Ernesto Rodriguez  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2006-13194

Dear Mr. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 263984.

The El Paso Police Department (the "department") received a request for all reports and calls regarding the requestor and another named individual at a certain address. You state that you will release some of the requested information, but claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and viewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You claim that a portion of the submitted information is subject to section 261.201. Upon review, we find that a portion of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. *See* Fam. Code § 261.001 (defining “abuse” and “neglect” for purposes of Family Code, ch. 261). Thus, this information is within the scope of section 261.201 of the Family Code. You do not inform us that the department has adopted any rules that govern the release of this type of information. Thus, we assume that no such rules exist. Therefore, we have marked the information that is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

You also claim that Exhibit E contains information subject to section 772.318 of the Health and Safety Code.<sup>1</sup> You contend that the originating telephone numbers and addresses of the 9-1-1 callers you have highlighted are excepted under section 552.101 in conjunction with section 772.318. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand the City of El Paso to be part of an emergency communication district that was established under section 772.318 and that the 9-1-1 callers’ telephone numbers and addresses were provided by a 9-1-1 service provider.<sup>2</sup> Thus, based on your representations and our review, we determine that the telephone numbers and addresses you have marked in Exhibit E are excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. We

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<sup>1</sup>Section 552.101 also encompasses section 772.318 of the Health and Safety Code.

<sup>2</sup>Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

have marked additional telephone numbers and addresses that may also be confidential under section 772.318. To the extent that section 772.318 also applies to the additional information we have marked, it must also be withheld under section 552.101.

Section 552.101 also encompasses the doctrine of common law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Exhibit E contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. In most cases, only the nature of the incident would be excepted from disclosure under section 552.101 in conjunction with common law privacy. In this instance, however, the requestor knows the nature of the incident in question as well as the identity of the individual involved. Therefore, withholding only the nature of the incident would not preserve the individual's common law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, we find that the department must withhold the information we have marked in Exhibit E in its entirety under section 552.101 of the Government Code in conjunction with common law privacy.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You claim that reports 06-208047 and 05-231389 relate to pending criminal prosecutions. You have submitted a letter from the El Paso District Attorney ("district attorney") informing us that report 06-20847 relates to a pending prosecution. Based on these representation and our review, we conclude that the release of report 06-20847 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases). However, although you also claim that report 05-231389 relates to a pending prosecution, we note that the report indicates that the case was presented to the district attorney who declined prosecution. Further, the letter from the district attorney does not seek to withhold report 05-231389. Thus, you have not shown how release of report 05-231389 would interfere with law enforcement, and the report may not be withheld on this basis.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the type of information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold report 06-20847 under section 552.108(a)(1).

Finally, report 05-231389 contains a social security number. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under Act. Therefore, the department must withhold the social security number contained in report 05-231389 under section 552.147.<sup>3</sup>

In summary, we have marked the information that is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101. The telephone numbers and addresses you have marked in Exhibit E are excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. We have marked additional telephone numbers and addresses that may also be confidential under section 772.318. The department must withhold the information we have marked in Exhibit E in its entirety under section 552.101 of the Government Code in conjunction with common law privacy. With the exception of basic information, the department may withhold report 06-20847 under section 552.108(a)(1). The department must withhold the social security number contained in report 05-231389 under section 552.147. The remaining information must be released. As our ruling on this issue is dispositive, we need not address the remaining arguments.

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<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

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If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'José Vela III', with a long horizontal flourish extending to the right.

José Vela III  
Assistant Attorney General  
Open Records Division

JV/eb

Ref: ID# 263984

Enc. Submitted documents

c: Mr. Hakim Ali Muhammad  
11108 Seaview Drive  
El Paso, Texas 79936  
(w/o enclosures)