



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 18, 2009

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2009-02124

Dear Ms. Sandoval-Walker:

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# 335295.

The El Paso Police Department (the "department") received a request for 9-1-1 recordings and computer aided dispatch ("CAD") regarding a specified case number, and the disciplinary records of a named officer. You claim that the submitted information is exempted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted audio recordings is not responsive to the instant request. The request concerns audio recordings of 9-1-1 calls regarding an automobile accident; however, a portion of the submitted audio recordings is a 9-1-1 call pertaining to an unrelated argument. The portion of the audio recordings concerning the unrelated argument is not responsive and need not be released in response to this request, to the extent that the department has the capacity to redact this information from the submitted audio recording.

Next, section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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(a)(1) must reasonably explain how and why

---

<sup>1</sup>Although you also raised section 552.101 of the Government Code as an exception to disclosure, we note that you submitted no arguments in support of this claim. Therefore, we do not address this exception. See Gov't Code §§ 552.301, .302.

the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending investigation by the department. Based upon this representation and our review, we conclude that section 552.108(a)(1) is applicable to the submitted audio recordings and CAD report. *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, you have not explained how release of the submitted disciplinary records would interfere with law enforcement. Accordingly, the submitted disciplinary records may not be withheld under section 552.108.

We note that section 552.108 is limited by section 552.108(c), which provides that 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). Basic information refers to the information set forth 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 types of information not excepted from disclosure by 552.108 in *Houston Chronicle*). In Open Records Decision No. 649 at 3 (1996), this office concluded that information contained in a CAD report is substantially the same as basic information and is not excepted from public disclosure under section 552.108. *See also* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in police dispatch records or radio logs and front page offense report information expressly held to be public in *Houston Chronicle*, and thus, such information is generally public). Because the CAD report is basic information about this investigation, it may not be withheld under section 552.108 of the Government Code.

However, we note that some of the information in the submitted CAD report is subject to section 552.101 of the Government Code.<sup>2</sup> Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *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. This office has found that personal

---

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990).

We find that portions of the submitted information, which we have marked, are intimate or embarrassing and of no legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

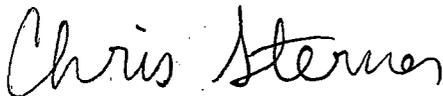
Further, we note that some of the remaining information in the submitted CAD report is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. Accordingly, the department must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

In summary, (1) the department may withhold the submitted audio recordings under section 552.108(a)(1) of the Government Code; (2) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 335295

Enc. Submitted documents

c: Requestor  
(w/o enclosures)