



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 6, 2011

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901-1196

OR2011-07923

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# 419731.

The El Paso Police Department (the "department") received a request for information pertaining to a specified automobile accident and all criminal reports involving a named individual. You state you have released some of the requested information, including the police officer's crash report pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c)(4) (providing for release of accident report if requestor provides two of following three pieces of information: (1) date of accident, (2) name of any person involved in accident, and (3) specific location of accident). You further state you have no information responsive to a portion of the request.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the department received the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

Next, we note you seek to withhold information relating to 9-1-1 callers. In Open Records Letter No. 2003-0708 (2003), this office issued a previous determination that authorizes the department to withhold the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.<sup>2</sup> See Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)). Therefore, to the extent the information you have marked consists of the telephone numbers and addresses of 9-1-1 callers that were furnished by a service supplier established in accordance with chapter 772, the department must withhold any such information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code in accordance with the previous determination issued to the department in Open Records Letter No. 2003-0708.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the request, in part, seeks all records pertaining to a named individual. Thus, this portion of the request requires the department to compile unspecified law enforcement records pertaining to a named individual. This request for a compilation of unspecified law enforcement records implicates the privacy rights of the named individual. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal

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<sup>2</sup>Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes.

defendant, the department must withhold any such records under section 552.101 of the Government Code in conjunction with common-law privacy.

We note portions of the responsive information are subject to section 552.130 of the Government Code.<sup>3</sup> Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we find portions of the responsive information consist of Texas motor vehicle record information. Accordingly, the department must withhold the Texas motor vehicle record information, which we have marked and noted, under section 552.130 of the Government Code.<sup>4</sup>

In summary, to the extent the information you have marked consists of the telephone numbers and addresses of 9-1-1 callers that were furnished by a service supplier established in accordance with chapter 772, the department must withhold any such information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code in accordance with the previous determination issued to the department in Open Records Letter No. 2003-0708. To the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such records under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the Texas motor vehicle record information we have marked and noted under section 552.130 of the Government Code. The remaining responsive information must be released.<sup>5</sup>

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.

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<sup>3</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number, a copy of a Texas driver's license, a Texas license plate number, the portion of a photograph that reveals a Texas license plate number, and the portion of a video depicting a discernable Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>5</sup>We note the information being released in this instance includes information that may be confidential with respect to the general public. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/bs

Ref: ID# 419731

Enc. Submitted documents

c: Requestor  
(w/o enclosures)