



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, 9th Floor
El Paso, Texas 79901

OR2011-08014

Dear Ms. 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# 419599.

The El Paso Police Department (the "department") received a request for all police reports or calls for service involving a specified address or named individual. You state the department has released responsive report number 08-246164 to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

First, 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.¹ 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

¹Section 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.

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 encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. For purposes of section 58.007(c), a "child" is a person who is ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). Upon review, we agree submitted report number 10-135185 involves a child engaged in delinquent conduct for purposes of section 58.007. We have no indication any of the exceptions to confidentiality in section 58.007 apply to this report. Consequently, we agree report number 10-135185 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. Although you also claim the remaining information is confidential pursuant to section 58.007, the only offender in this information was seventeen years of age at the time of the offense. Because the remaining information does not identify any criminal suspects between the ages of ten and sixteen, we conclude this information is not confidential under section 58.007 and may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses the common-law right of privacy. Common-law privacy protects information that (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. *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. This office has found some kinds of medical

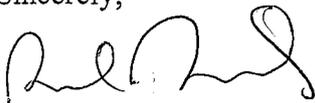
information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we have marked some medical information that is of no legitimate public interest. The department must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold 9-1-1 callers' telephone numbers and addresses under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code pursuant to the previous determination in Open Records Letter No. 2003-0708. The department must withhold report number 10-135185 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must also withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining submitted 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, 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eb

Ref: ID# 419599

Enc. Submitted documents

c: Requestor
(w/o enclosures)