



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2011

Mr. Robert Almonte
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2011-16467

Dear Mr. Almonte:

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# 435685.

The El Paso Police Department (the "department") received a request for 9-1-1 transcripts and all reports concerning a specified address during a certain period. You state the department has released some of the requested information with a redaction pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed 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." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which

¹Section 552.147 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. *See* Gov't Code § 552.147(b).

²Although you raise section 552.101 of the Government Code in conjunction with constitutional privacy, you provide no arguments to support this claim. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested). Accordingly, we do not address your assertion of constitutional privacy for the submitted information.

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. *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 established. *Id.* at 681–82. The types of information considered intimate or 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. *Id.* at 683. Generally, only highly intimate or embarrassing information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. Although you seek to withhold the entirety of the reports related to case numbers 10-181002, 10-337269, 11-178254, and 11-220010 based on common-law privacy, we find this is not a situation where all of this information must be withheld to protect an individual's privacy interest. Accordingly, the department may not withhold the reports related to case numbers 10-181002, 10-337269, 11-178254, and 11-220010 in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than a conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state the reports related to case numbers 10-181002, 10-337269, 11-167187, 11-178254, 11-195273, and 11-220010 pertain to investigations that did not result in convictions or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) of the Government Code is applicable to these reports.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public 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* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes a sufficient portion of the narrative to satisfy a detailed description of the offense. Accordingly, with the exception of basic information, the department may withhold the reports related to case numbers 10-181002, 10-337269, 11-167187, 11-178254, 11-195273, and 11-220010 pursuant to section 552.108(a)(2) of the Government Code.

We note some of the basic information in these reports is protected by common-law privacy. As previously mentioned, common-law privacy protects information that is highly intimate

or embarrassing and of no legitimate public interest. *Indus. Found.*, 540 S.W.2d 685. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore, in releasing basic information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we note you have redacted 9-1-1 caller information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. In Open Records Letter No. 2003-0708 (2003), this office issued the department a previous determination authorizing the withholding of 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 772.318 of the Health and Safety Code. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Accordingly, the department must withhold the telephone numbers and addresses we have marked pursuant to the previous determination in Open Records Letter No. 2003-0708. However, none of the remaining information you have redacted or marked for withholding consists of telephone numbers or addresses furnished by a 9-1-1 service provider; therefore, it may not be withheld pursuant to Open Records Letter No. 2003-0708. You do not assert, nor does a review of our records indicate, that you have otherwise been authorized to withhold the redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a), ORD 673. Because we can discern the nature of the redacted information, being deprived of that information does not inhibit our ability to make a ruling. Accordingly, we have marked this information for release. However, in the future, the department must not redact requested information that it submits to this office in seeking an open records ruling, unless the department is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. *See* Gov't Code § 552.301(e)(1)(D). Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

We note the requestor is an investigator with the Texas Department of Aging and Disability Services. The interagency transfer doctrine provides that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinion No. GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000). However, an interagency transfer of confidential information is prohibited where a confidentiality statute enumerates specific entities to which release of confidential information is authorized, and the requesting agency is not among the statute's enumerated entities. *See* Attorney General Opinion DM-353 at 4 n.6 (1995); Open Records Decision No. 661 at 3 (1999).

Common-law privacy, sections 552.108 and 552.147 of the Government Code, and section 772.318 of the Health & Safety Code are not confidentiality statutes that enumerate

specific entities to which the release of confidential information is authorized. Thus, pursuant to the interagency transfer doctrine, the department has the discretion to release the information subject to common-law privacy, sections 552.108 and 552.147 of the Government Code, and section 772.318 of the Health & Safety Code to the requestor. Furthermore, release pursuant to the interagency transfer doctrine does not constitute a release of information to the public for the purposes of section 552.007 of the Government Code. *See, e.g.*, Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the department does not waive its interests in withholding this information by exercising its discretion under the interagency transfer doctrine. We note, however, the motor vehicle record information you have marked is subject to section 552.130 of the Government Code, which has its own access provision governing release of information. *See* Gov't Code § 552.130(b). Consequently, because information subject to this exception must be withheld if the department chooses to release the submitted information pursuant to the interagency transfer doctrine, we must consider the applicability of this exception to the marked information.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state, or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as amendments to Gov't Code § 552.130(a)(1), (2)). Accordingly, if the department chooses to release the remaining information pursuant to the interagency transfer doctrine, the department must withhold the information you have marked under section 552.130 of the Government Code.

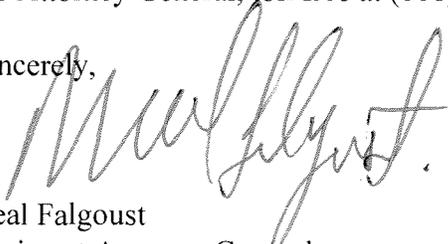
In summary, with the exception of the motor vehicle record information you have marked under section 552.130 of the Government Code, the department has the discretion to release the submitted information to this requestor under the interagency transfer doctrine. Should the department choose not to exercise its discretion under the interagency transfer doctrine, then, (1) with the exception of basic information, the department may withhold the reports related to case numbers 10-181002, 10-337269, 11-167187, 11-178254, 11-195273, and 11 220010 under section 552.108(a)(2) of the Government Code; (2) the department must withhold the information we have marked from the basic information under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the department must withhold the 9-1-1 callers' telephone numbers and addresses we have marked pursuant to the previous determination in Open Records Letter No. 2003-0708. 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, 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 "Neal Falgoust". The signature is written in a cursive style with a large initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/agn

Ref: ID# 435685

Enc. Submitted documents

c: Requestor
(w/o enclosures)