



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2012

Ms. Sol M. Cortez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2012-01946

Dear Ms. Cortez:

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# 444905.

The El Paso Police Department (the "department") received a request for all information pertaining to law enforcement responding to a specified address during a specified period of time. You state you have released some of the requested information to the requestor. You indicate you will redact the driver's license number you have marked under section 552.130 of the Government Code¹ and the social security number you have marked under section 552.147 of the Government Code.² You claim that portions of the submitted information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹On September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3), such as driver's license numbers, without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *Id.* § 552.130(d), (e).

²Section 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. *See* Gov't Code § 552.147(b).

Initially, 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 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 Gov't Code § 552.301(a)). Therefore, to the extent the information you have marked contains 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 772.318 of the Health and Safety Code in accordance with the previous determination issued to the department in Open Records Letter No. 02003-0708. However, the remaining 9-1-1 call information you have marked consists of cross-streets, which are not telephone numbers or addresses furnished by a 9-1-1 service provider. Therefore, this information may not be withheld pursuant to Open Records Letter No. 2003-0708.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the reports related to case numbers 10-277168, 11-143217, 04-221282, 01-122317, 98-004261, and 96-068099 pertain to investigations that did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) generally applies to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (summarizing types of information considered to be basic information), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Basic information must be released even if it does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the reports related to case

numbers 10-277168, 11-143217, 04-221282, 01-122317, 98-004261, and 96-068099 under section 552.108(a)(2) of the Government Code.³

We note portions of the basic information may be subject to common-law privacy. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”⁴ Gov’t Code § 552.101. This exception encompasses the doctrine of common-law privacy, which 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 established. *Id.* at 681-82. The type of information considered highly 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. Upon review, we find portions of the basic information are highly intimate or embarrassing and of no legitimate public concern. Accordingly, in releasing the basic information to the requestor, the department must withhold the information we marked under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold 9-1-1 callers’ telephone numbers and addresses under section 772.318 of the Health and Safety Code pursuant to the previous determination in Open Records Letter No. 2003-0708. With the exception of basic information, the department may withhold the reports related to case numbers 10-277168, 11-143217, 04-221282, 01-122317, 98-004261, and 96-068099 under section 552.108(a)(2) of the Government Code. In releasing the basic information to the requestor, the department must withhold the information we marked under section 552.101 in conjunction with common-law privacy. 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.

³As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure except to note basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code. *See* Open Records Decision No. 597 (1991).

⁴The 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).

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 'Sarah Casterline', with a stylized flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 444905

Enc. Submitted documents

c: Requestor
(w/o enclosures)