



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 23, 2012

Ms. Sol M. Cortez  
Assistant City Attorney  
El Paso City Prosecutor's Office  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901-2516

OR2012-02806

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# 446204.

The El Paso Police Department (the "department") received a request for records pertaining to two specified locations during two specified periods of time. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note you seek to withhold the telephone numbers and addresses of 9-1-1 callers. In Open Records Letter No. 2003-0708 (2003), this office issued a previous determination to the department authorizing it to withhold the originating telephone number and address of a 9-1-1 caller 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 without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). You state the telephone number and address you have marked are the originating telephone number and address of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772. As such, the department must withhold the marked telephone number and address in accordance with the previous determination issued in Open Records Letter No. 2003-0708.

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. Common-law privacy protects information if the information (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). 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. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that 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. In this instance, the submitted information reveals that the requestor knows the identity of the individual involved as well as the nature of the information in report 07-231169. Therefore, withholding only the individual’s identity or certain details of the incident from the requestor would not preserve the subject individual’s common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold report 07-231169 in its 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 “[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 reports 11-227193 and 11-325143 relate to cases 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.

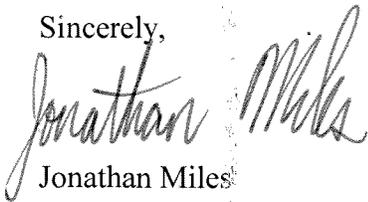
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th 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 reports 11-227193 and 11-under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold the marked telephone number and address in accordance with the previous determination issued in Open Records Letter No. 2003-0708. the department must withhold report 07-231169 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. With the exception of basic information, the department may withhold reports 11-227193 and 11-325143 under section 552.103(a)(2) 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, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/agn

Ref: ID# 446204

Enc. Submitted documents

c: Requestor  
(w/o enclosures)