



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 1, 2012

Mr. Robert Almonte  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9th Floor  
El Paso, Texas 79901

OR2012-11998

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# 460831.

The El Paso Police Department (the "department") received a request for three specified 9-1-1 call recordings and their corresponding police reports. You state the department has released some of the requested information to the requestor. You claim the remaining submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than 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 has concluded in a final result other than a conviction or deferred adjudication. You state the submitted information pertains to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the submitted information.

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 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). We note basic information includes a detailed description of the offense, but does not include motor vehicle information encompassed by section 552.130 of the Government Code. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public *Houston Chronicle*). Thus, with the exception of the basic front page offense and arrest information, you may withhold the submitted reports and 9-1-1 audio recordings from disclosure based on section 552.108(a)(2) of the Government Code.<sup>1</sup>

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.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which 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 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 the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, in releasing basic information, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

You seek to withhold some of the remaining information under constitutional privacy, which is also encompassed by section 552.101 of the Government Code. The constitutional right to privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599–600 (1977); *see also* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); *see also* ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir.1985); *see also* ORD 455 at 6-7. This aspect of constitutional privacy balances the individual’s privacy interest against the public’s

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

interest in the information. See ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). Upon review, we find no portion of the remaining information falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Consequently, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy.

In summary, with the exception of the basic information, the department may withhold the submitted reports and 9-1-1 audio recordings from disclosure based on section 552.108(a)(2) of the Government Code. However, in releasing the basic information, the department must the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/dls

Ref: ID# 460831

Enc. Submitted documents

c: Requestor  
(w/o enclosures)