



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2013

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

OR2013-00586

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# 475639.

The El Paso Police Department (the "department") received a request for the audio recordings and transcripts pertaining to two calls regarding a specified incident. You claim a portion of 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.

You seek to withhold the submitted 9-1-1 audio recordings in their entireties and the telephone number and address of 9-1-1 callers you have marked in the submitted event information reports. In Open Records Letter No. 2003-0708 (2003), this office issued a previous determination authorizing 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 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).* Therefore, to the extent the information you have marked consists of the originating telephone number and address of 9-1-1 callers

furnished by a service supplier established in accordance with chapter 772, the department must withhold the information you have marked in the submitted event information reports 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. However, we find no portion of the remaining information consists of the originating address or telephone number of a 9-1-1 caller furnished by a service supplier for the purposes of section 772.318. Therefore, none of the remaining information may be withheld on this basis.

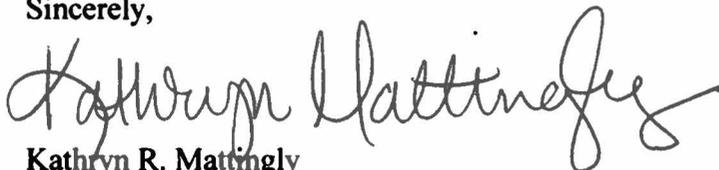
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains 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. 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 find the information we have marked in the submitted reports and indicated in the submitted recordings constitutes information that is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the information you have marked in the submitted event information reports consists of the originating telephone number and address of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772, the department must withhold the marked 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. The department must withhold the information we have marked and indicated under section 552.101 of the Government Code 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, 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/bhf

Ref: ID# 475639

Enc. Submitted documents

c: Requestor
(w/o enclosures)