



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 25, 2013

Mr. Matthew B. Cross  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2013-06858

Dear Mr. Cross:

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# 485386.

The El Paso Police Department (the "department") received a request for all incident, arrest, or offense reports pertaining to a specified address during a specified time period. You state the department has released redacted copies of the submitted #1 complaint reports, arrest supplements, and 9-1-1 transcripts to the requestor. You indicate the department will redact driver's license information pursuant to section 552.130(c) of the Government Code and a social security number pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim some of the 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.

Initially, we note you have marked the telephone numbers and addresses of 9-1-1 callers in the submitted calls for service reports. In Open Records Letter No. 2003-0708 (2003), this office issued a previous determination authorizing the department to withhold the originating

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<sup>1</sup>Section 552.130(c) of the Government Code authorizes governmental bodies to redact the information described in subsections 552.130(a)(1) without the necessity of seeking a decision from the attorney general. See 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). See *id.* § 552.130(d), (e). Section 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. *Id.* § 552.147(b).

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 numbers and addresses 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.

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 doctrines of common-law privacy and constitutional privacy. Common-law privacy 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 met. *Id.* at 681-82. The type 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. *See 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 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.

Constitutional privacy consists of two inter-related types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *See id.* at 7. The scope of information protected by constitutional privacy is narrower than that under common-law privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

In this instance, the submitted information reflects the requestor knows both the nature of the incident to which report number 12-172228 pertains and the identity of the individual involved. Therefore, withholding only the individual's identity or certain details of this

incident from the requestor would generally not preserve the individual's common-law right to privacy. Accordingly, the department must withhold report number 12-172228, which we have marked, in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, we find portions of the calls for service report labeled P2012122182 are highly intimate or embarrassing and of no legitimate public concern. Thus, the department must withhold the information we have marked in the calls for service report labeled P2012122182 under section 552.101 in conjunction with common-law privacy. However, we find you have not demonstrated how any portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern or falls within the zones of privacy or otherwise implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law or constitutional privacy.

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. *See 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). You state some of the remaining information relates to cases that concluded in results other than conviction or deferred adjudication. Based on this representation, we find section 552.108(a)(2) is generally applicable to the most of remaining information at issue. However, we note report number 13-027141 reveals the defendant was convicted on the charge arising out of this incident. Thus, we find you have failed to demonstrate report number 13-027141 pertains to a criminal investigation that did not result in conviction or deferred adjudication. Accordingly, we conclude the department may not withhold report number 13-027141 under section 552.108(a)(2) of the Government Code.

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) and includes a detailed description of the offense and the identity of the complainant. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of report number 13-027141 and the basic information from the remaining reports at issue, the department may withhold the remaining information at issue under section 552.108(a)(2) of the Government Code.<sup>2</sup>

In summary, to the extent the information you have marked consists of the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772, the department must withhold the marked information under

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining argument.

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 report number 12-172228 in its entirety and the information we have marked in the calls for service report labeled P2012122182 under section 552.101 of the Government Code in conjunction with common-law privacy. Except for report number 13-027141 and the basic information from the remaining reports at issue, the department may withhold the remaining information at issue under section 552.108(a)(2) of the Government Code. The department must release the remaining information.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 485386

Enc. Submitted documents

c: Requestor  
(w/o enclosures)