



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2013

Mr. John R. Batoon
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-15052

Dear Mr. Batoon:

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# 497672.

The El Paso Police Department (the "department") received a request for 9-1-1 call recordings, 9-1-1 call transcripts, and photographs pertaining to incidents where the requestor or her spouse made complaints regarding three named individuals from October of 2009 to the date of the request. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the request for information because it was created outside the date range specified by the requestor; consists of incident reports and not 9-1-1 call recordings, 9-1-1 call transcripts, or photographs; or does not pertain to the three named individuals. This ruling does not address the public availability of information that is not responsive to the request, and the department is not required to release non-responsive information.

Section 552.108(a)(1) 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] release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental

body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the responsive information relates to a pending criminal investigation. We note, however, the responsive information consists of numerous 9-1-1 call transcripts pertaining to various different incidents. You do not explain how these numerous transcripts relate to the pending investigation, or how release of information pertaining to various incidents would interfere with the investigation of one particular case. Thus, we find you have failed to demonstrate the release of the responsive information would interfere with the detection, investigation, or prosecution of crime. Therefore, the department may not withhold the responsive information under section 552.108(a)(1) of the Government Code.

We note a portion of the responsive information is 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.”¹ Gov’t Code § 552.101. Section 552.101 encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *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. *Id.* at 683. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exception against disclosure of the remaining responsive information, it 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

¹The 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).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/ag

Ref: ID# 497672

Enc. Submitted documents

c: Requestor
(w/o enclosures)