



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2013

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

OR2013-18656

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# 503446.

The El Paso Police Department (the "department") received a request for information pertaining to any incidents at the requestor's address during a specified time period. You state the department has released some of the requested information. You claim the submitted 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 representative sample of information.¹

Initially, we note you have redacted a 9-1-1 caller's information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. 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 772.318 of the Health and Safety Code. See Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Accordingly, the

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

department must withhold the 9-1-1 caller's telephone number and address you have marked pursuant to the previous determination in Open Records Letter No. 2003-0708. However, we note you have also redacted information that is not a telephone number or address of a 9-1-1 caller. Therefore, this information is not subject to the previous determination. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold this information without seeking a ruling from this office. *See Gov't Code* § 552.301(a); ORD 673. Because we can discern the nature of the redacted information, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, the department must not redact requested information that it submits to this office in seeking an open records ruling, unless the department is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. *See Gov't Code* § 552.301(e)(1)(D). Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal

representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). You contend the submitted information is subject to section 261.201 of the Family Code. Upon review, we find report number 13-034112 and the corresponding call for service report number 2013058815 pertain to an investigation of alleged or suspected child abuse or neglect and fall within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Although the requestor is a parent of the child victim, the requestor is one of the individuals alleged to have committed the alleged or suspected abuse or neglect. Thus, the requestor does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must withhold report number 13-034112 and call for service report number 2013058815, which we have marked, in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² However, we find you have failed to demonstrate how any of the remaining information involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 of the Family Code or how this information was used or developed in an investigation under chapter 261. Accordingly, we conclude the department may not withhold any of the remaining information under section 552.101 on this basis.

Section 552.108(a) 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: (1) 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(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *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 remaining information in Exhibit B is part of an ongoing investigation by the department. Based upon your representation and our review, we conclude release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the remaining information.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the 9-1-1 caller's telephone number and address you have marked pursuant to the previous determination in Open Records Letter No. 2003-0708. The department must withhold report number 13-034112 and call for service report number 2013058815, which we have marked, in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

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

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

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³We note the basic information being released includes the social security number of the requestor, to which the requestor has a right of access. See generally Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). 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). Thus, if the department receives another request for this same information from a person who does not have such a right of access, section 552.147(b) authorizes the department to redact the requestor's social security number.

Ref: ID# 503446

Enc. Submitted documents

c: Requestor
(w/o enclosures)