



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 26, 2013

Mr. Daniel Ortiz  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2013-20629

Dear Mr. Ortiz:

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# 508315 (El Paso ORR No. 13-1026-3523)

The El Paso Police Department (the "department") received a request for a specified incident report. The department claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

You inform us the requested information includes the telephone number and address of a 9-1-1 caller.<sup>1</sup> 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

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<sup>1</sup>Although you inform us the department seeks to withhold the information you have highlighted in yellow, we note none of the submitted information is highlighted. See Gov't Code § 552.301(e)(2) (governmental body must label copy of information at issue to indicate which exceptions apply to which parts of the information).

a decision from this office.<sup>2</sup> 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 submitted information contains the originating telephone number and address of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772, the department must withhold such 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 also encompasses section 261.201 of the Family Code, which provides, in part, as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 this chapter 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 this chapter or in providing services as a result of an investigation.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 261.201(a), (h). You state the submitted information relates to a report of alleged child abuse. However, section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. *Id.* § 261.201(h). The incident at issue occurred at a facility that is regulated under chapter 42 of the Human Resources Code. Accordingly, we find section 261.201 does not apply to the investigation in question, and the department may not withhold the information under section 552.101 on that basis.

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<sup>2</sup>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. This section encompasses information protected by other statutes.

Section 552.101 of the Government Code also encompasses the doctrine of 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also held common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. See Open Records Decision No. 394 (1983); cf. Fam. Code § 261.201. Upon review, we find the identifying information of the child victim at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, the requestor may be an authorized representative of the child victim. Section 552.023 of the Government Code provides a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a). Thus, we must rule conditionally. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy if the requestor is not an authorized representative of the child victim. The department may not withhold this information under section 552.101 in conjunction with common-law privacy, but instead must release it pursuant to section 552.023 of the Government Code, if the requestor is an authorized representative of the child victim. The remaining information at issue is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

To conclude, to the extent the submitted information contains the originating telephone number and address of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772, the department must withhold such 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 under section 552.101 of the Government Code in conjunction with common-law privacy; however, the department must release this information pursuant to section 552.023 of the Government Code if the requestor is an authorized representative of the child victim. 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.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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 508315

Enc. Submitted documents

c: Requestor  
(w/o enclosures)