



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 22, 2014

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

OR2014-12679

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# 529959 (Ref. No. 14-1026-4330).

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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 (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. Additionally, this office has

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<sup>1</sup>Although you also raise section 552.101 in conjunction with constitutional privacy for the submitted information, you provide no arguments explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this doctrine. *See* Gov't Code §§ 552.301, 302.

concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual's privacy. In this instance, report number 14-112300 reveals the requestor knows the identity of the individual involved as well as the nature of the incident at issue in the report. Therefore, withholding only the individual's identity or certain details of the incident at issue in report number 14-112300 from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must generally withhold report number 14-112300 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, although you seek to withhold report number 14-112301 in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entirety of report number 14-112301 must be withheld on the basis of common-law privacy. However, we agree that portions of report number 14-112301 are highly embarrassing and not of legitimate public interest. Accordingly, the department must generally withhold the information we have marked in report number 14-112301 under section 552.101 in conjunction with common-law privacy.

We note, however, that the requestor is the spouse of the individual to whom the private information pertains and may have a right of access to this information. *See* Gov't Code § 552.023(b) ("person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"). Thus, if the requestor is acting as the authorized representative of her spouse, then she has a right of access to report number 14-112300 and the information we have marked in report number 14-112301 pursuant to section 552.023(b), and this information may not be withheld from her under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of her spouse, then the department must withhold the entirety of report number 14-112300 and the information we have marked in report number 14-112301 under section 552.101 in conjunction with common-law privacy.

We next address your argument under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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 report numbers 14-112300 and 14-112301 both relate to a pending criminal investigation. Based upon this representation and our review, we find release of the information at issue 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).

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 to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). If the requestor is not acting as the authorized representative of her spouse, then with the exception of basic information, the department may withhold the remaining information in report number 14-112301 under section 552.108(a)(1). If the requestor is acting as the authorized representative of her spouse, then, with the exception of basic information, the department may withhold report numbers 14-112300 and 14-112301 under section 552.108(a)(1) of the Government Code.<sup>2</sup>

In summary, if the requestor is not acting as the authorized representative of her spouse, then the department must withhold report number 14-112300 in its entirety and the information we have marked in report number 14-112301 under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold the remaining information in 14-112301 under section 552.108(a)(1) of the Government Code. If the requestor is acting as the authorized representative of her spouse, then, with the exception of basic information, the department may withhold report numbers 14-112300 and 14-112301 under section 552.108(a)(1) of the Government Code.

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](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

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<sup>2</sup>As we are able to resolve this issue under section 552.108, we do not address your remaining claim against disclosure of the submitted information, except to note basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

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 cursive script that reads "Jennifer Luttrall".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 529959

Enc. Submitted documents

c: Requestor  
(w/o enclosures)