



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2007

Mr. Ernesto Rodriguez
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza, 9th floor
El Paso, Texas 79901

OR2007-08543

Dear Mr. Rodriguez:

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# 282890.

The El Paso Police Department (the "department") received a request for a copy of the police report and transcript of the 9-1-1 call from a specified incident, as well as a transcript of all 9-1-1 calls placed by a named individual. You state that you have provided the requestor with a portion of the requested information. You claim that the remaining information is exempted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information, a 9-1-1 transcript not pertaining to the specified incident or placed by the named individual, is not responsive to the request. Information that is not responsive to this request, which we have marked, need not be released. Moreover, we do not address such information in this ruling. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No.452 at 3 (1986).

Section 552.101 of the Government Code exempts 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 that is made confidential by statute.

You contend that the submitted information is made confidential pursuant to section 261.201(a) of the Family Code, which provides in pertinent part:

(a) 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.

Fam. Code § 261.201(a). You have not explained, and the submitted information does not otherwise indicate, how any portion of it was used or developed in an investigation under chapter 261 of the Family Code. Therefore, the information may not be withheld under section 552.101 of the Government Code on that basis.

You also claim that report #05-228006 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) 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 § 522.108(a). Generally, 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.* § 522.108(a)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report #05-228006 relates to a pending criminal investigation. Based upon this representation and our review of the information, we conclude that the release of report #05-228006 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), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to this information.

However, as you acknowledge, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c); *see also* Open Records Decision No. 127 (1976) (summarizing basic information). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d 186-87. Thus, with the exception of basic information, which you

state you have released, the department may withhold report #05-228006 under section 552.108(a)(1).

In summary, with the exception of basic information, the department may withhold report #05-228006 under section 552.108(a)(1). The remaining information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Nikki Hopkins". The signature is fluid and cursive, with the first name "Nikki" being more prominent than the last name "Hopkins".

Nikki Hopkins
Assistant Attorney General
Open Records Division

NH/sdk

Ref: ID# 282890

Enc. Submitted documents

c: Ms. Yvonne Aboud Russell
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(w/o enclosures)