



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2013

Mr. Matthew B. Cross
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2013-03448

Dear Mr. Cross:

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# 479925.

The El Paso Police Department (the "department") received a request for information concerning domestic violence incidents involving a named individual and the requestor at a specified address during a certain time period. You state the department will release some information upon the requestor's payment of copying costs. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor seeks information concerning domestic violence reports involving himself and another named individual. Some of the submitted information does not involve domestic violence or does not involve the named individuals. We find this information, which we have marked, is not responsive to the request. Our office does not address the public availability of information that is not responsive to a request, and the department is not required to release non-responsive information.

¹Although you do not raise section 552.147 in your brief, we understand you to raise this exception based on the information you have marked.

Next, you seek to withhold several addresses and telephone numbers you have marked 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 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code without requesting a decision from this office.² See Gov't Code § 552.301(a); 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). We note, however, some of the information you have marked was obtained from an online crime report, not a 9-1-1 service supplier. This information, which we have marked for release, is not made confidential by section 772.318 and may not be withheld on that basis pursuant to the previous determination. As you raise no other exceptions for this information, we have marked it for release. However, to the extent the remaining information you have marked consists of the originating telephone number or address of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772, the department must withhold that 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 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). Section 552.108(a)(1) is applicable to information pertaining to a pending criminal investigation or prosecution, while section 552.108(a)(2) protects law enforcement records pertaining to a criminal investigation or prosecution that concluded in a final result other than a conviction or a deferred adjudication. A governmental body claiming section 552.108 must reasonably explain how and why the

²Section 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. Section 552.101 encompasses other statutes that make information confidential.

release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state reports 06-287252 and 06-345350 pertain to pending criminal investigations. However, we note each of these cases pertains to a misdemeanor assault that occurred in 2006. The statute of limitations for misdemeanor assault is two years from the date of the offense. *See* Crim. Proc. Code art. 12.02(b) (complaint or information for Class C misdemeanor may be presented within two years from date of commission of the offense, and not afterward); *see also* Penal Code § 22.01(c) (assault under section 22.01(a)(3) of the Penal Code is a Class C misdemeanor). On the date the department received the request for information, more than two years had elapsed since the events giving rise to the investigations at issue, and you have not informed this office any criminal charges were filed within the limitations period. Further, you have not otherwise demonstrated how release of these reports would interfere with the detection, investigation, or prosecution of a crime. Therefore, we find you have not demonstrated the applicability of section 552.108(a)(1) to reports 06-287252 and 06-345350 and the department may not withhold them on that basis.

You state reports 11-121198 and 06-337025 pertain to criminal investigations that did not result in a conviction or deferred adjudication. Based on these representations, we agree the department may generally withhold these reports under section 552.108(a)(2) of the Government Code. However, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). This information includes, but is not limited to, a sufficient portion of the narrative to include a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold reports 11-121198 and 06-337025 under section 552.108(a)(2) of the Government Code.

Section 552.147 of the Government Code provides, “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov't Code § 552.147. However, we note section 552.147 is designed to protect privacy interests, and an individual has a right of access to private information concerning himself. *See generally id.* § 552.023. As you have marked the requestor’s social security number in the remaining responsive information, we conclude the department may not withhold this information under section 552.147 of the Government Code.

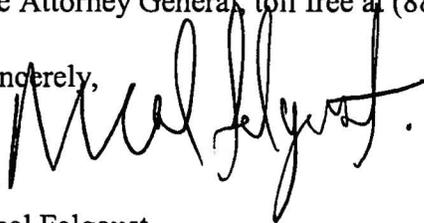
In summary, to the extent the information we have not marked for release consists of the originating telephone number or address of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772, the department must withhold the responsive information you have marked under 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. With the exception of basic information, the department may withhold reports 11-121198 and 06-337025 under section 552.108(a)(2) of the Government Code. The remaining responsive information must be released.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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 479925

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a right of access to his own social security number. If the department receives another request for this same information from a different requestor, the department is authorized to withhold this social security number without requesting a decision from this office. See Gov't Code §552.147(b).