



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2013

Mr. Matthew B. Cross
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-04628

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# 482109.

The El Paso Police Department (the "department") received a request for information concerning family violence, harassment, and domestic dispute calls to a certain address since 1998 and involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the department does not maintain records that are older than five years. We note the Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1–2 (1990). However, you have submitted records from 2002. If any other records older than five years exist, we presume the department has released them. If not, the department must do so at this time. *See Gov't Code §§ 552.301, .302; see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Next, we note some of the submitted information concerns incidents other than family violence, harassment, or domestic disputes, or they occurred at a location other than the

address specified. These records, which we marked, are not responsive to the request. Our ruling 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.¹

You seek to withhold several addresses and telephone numbers you 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, one of the addresses you marked is the location of a cellular telephone antenna and is not the originating address of a 9-1-1 caller. Additionally, one of the telephone numbers you marked was provided by the caller and not a service supplier. Accordingly, this information, which we marked, 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, the department must release it. Nonetheless, to the extent the remaining information you 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(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. See *id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2-3 (1986). You state the investigations concerning cases 02-219250, 11-144268, and 12-144162 have concluded and did not result in a conviction or deferred adjudication. Based on these representations, we agree section 552.108(a)(2) of the Government Code is applicable.

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

¹As our determination is dispositive for case 10-032179, we do not address your claimed exception for this information.

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.

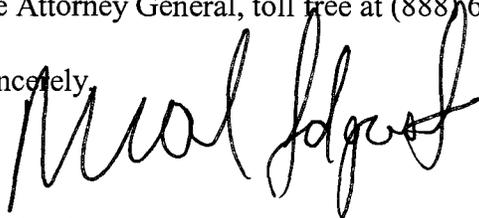
the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). This information includes, but is not limited to, a detailed description of the offense. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note motor vehicle record information subject to section 552.130 of the Government Code is not part of basic information.³ Accordingly, with the exception of basic information, the department may withhold the information concerning cases 02-219250, 11-144268, and 12-144162 under section 552.108(a)(2) 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 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. With the exception of basic information, the department may withhold the information concerning cases 02-219250, 11-144268, and 12-144162 under section 552.108(a)(2) of the Government Code. The department must release the remaining responsive 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.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

³As our ruling is dispositive, we will not address your assertion of section 552.130 of the Government Code.

Ref: ID# 482109

Enc. Submitted documents

c: Requestor
(w/o enclosures)