



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2013

Mr. Jon Thatcher
Assistant Criminal District Attorney
Rockwall County
1111 East Yellowjacket Lane, Suite 201
Rockwall, Texas 75087

OR2013-07539

Dear Mr. Thatcher:

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# 486517.

Rockwall County (the "county") received three requests for all reports and service calls pertaining to two specified addresses. You state the county has no information pertaining to one of the specified addresses.¹ You also state the county will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code 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

¹The 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), 452 at 3 (1986), 362 at 2 (1983).

body claiming section 552.108(a)(1) must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You claim section 552.108(a)(1). However, you have not stated the submitted information pertains to an ongoing criminal investigation or prosecution, nor have you explained how its release would in some way interfere with the detection, investigation, or prosecution of a particular crime. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to the submitted information and the county may not withhold any of the submitted information on that basis.

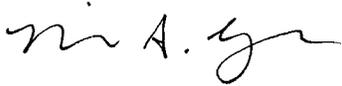
Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate 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, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. You argue some of the submitted information is protected by common-law privacy under *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). In *Ellen*, the court applied common-law privacy to an investigation of alleged sexual harassment in an employment context. Here, however, no portion of the submitted information relates to an investigation of alleged sexual harassment. Therefore, we conclude *Ellen* is not applicable in this instance and the county may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy on the basis of *Ellen*. Further, we note an individual’s name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person’s name, address, or telephone number not an invasion of privacy). Accordingly, you have failed to demonstrate the information at issue is highly intimate or embarrassing and not of legitimate public interest. Thus, no portion of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy. As no further exceptions to disclosure have been raised, the submitted information must be released.

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,

A handwritten signature in black ink, appearing to read "ni A. ybarra". The signature is fluid and cursive, with the first name "ni" and last name "ybarra" clearly visible.

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 486517

Enc. Submitted documents

c: Requestor
(w/o enclosures)