



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 3, 2014

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

OR2014-00201

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# 509920.

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you seek to withhold information relating to 9-1-1 callers. In Open Records Letter No. 2003-00708 (2003), this office issued a previous determination to the department authorizing the department to withhold the originating telephone number and address of a 9-1-1 caller furnished to the department 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. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). You indicate the telephone number and address you seek to withhold are the originating telephone number and address of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772. As such, provided the originating telephone number and address at issue were furnished to the department by a service supplier, the department may rely on Open Records Letter No. 2003-00708 as a previous determination and withhold the telephone number and address at issue in accordance with the previous determination.

Section 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 of the Government Code encompasses information made confidential by section 560.003 of the Government Code, which provides that "[a] biometric

identifier in the possession of a governmental body is exempt from disclosure under [the Act].” See *id.* § 560.003; see also *id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Upon review, we find the fingerprint we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code also encompasses the doctrines of common-law and constitutional privacy. Common-law privacy 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 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5, 478 at 4 (1987), 455 at 3-7 (1987). The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find you have failed to demonstrate how any portion of the information at issue falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the

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<sup>1</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general opinion.

department may not withhold any of the remaining information under section 552.101 on the basis of constitutional privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, provided the originating telephone number and address at issue were furnished to the department by a service supplier, the department may rely on Open Records Letter No. 2003-00708 as a previous determination and withhold the telephone number and address at issue in accordance with the previous determination. The department must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, (2) section 552.101 of the Government Code in conjunction with common-law privacy, and (3) section 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)