



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2009

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2009-02247

Dear Ms. Quinn:

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# 336625.

The City of Cedar Park (the "city") received a request for a specific incident report. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information consists of a court order that is also contained in a public court record. This information is subject to section 552.022(a)(17) of the Government Code, which provides:

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Accordingly, the city may withhold this portion of the submitted information only if it is "expressly confidential under other law." Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects the governmental body's interests and which may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) governmental body may waive section 552.108). As such, section 552.108 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold the submitted court order under section 552.108. We will next consider your section 552.108 argument with regard to the remainder of the submitted information.

Section 552.108(a)(2) 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 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)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the information at issue relates to a case that concluded with a result other than conviction or deferred adjudication. Accordingly, section 552.108(a)(2) is applicable to the submitted information.

As you note, 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, the city must release basic information from the submitted report.

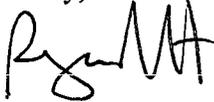
In summary, the city must release the submitted court order pursuant to section 552.022(a)(17) of the Government Code and must release basic information from the remainder of the submitted incident report pursuant to section 552.108(c). The city may withhold the remainder of the submitted information under section 552.108(a)(2).¹

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.

¹In light of this conclusion, we need not address your section 552.130 argument against disclosure of the submitted information.

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 at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

Ref: ID# 336625

Enc. Submitted documents

cc: Requestor
(w/o enclosures)