ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2010

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

OR2010-00957

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# 367796 (City of Cedar Park Reference Number 10-046).

The City of Cedar Park (the "city") received a request for all police reports and call sheets for two named individuals at a specified address from October 31, 2008 through October 25, 2009. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has

significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You have bracketed information you seek to withhold pursuant to section 552.101 in conjunction with common-law privacy. Upon review, we find you have failed to demonstrate how any portion of the bracketed information constitutes highly intimate or embarrassing information. Therefore, the city may not withhold any portion of the bracketed information under section 552.101 of the Government Code in conjunction with common-law privacy. However, the present request seeks information pertaining to two named individuals at a specified address. We find that this request for unspecified law enforcement records implicates the named individuals' right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy.

We note, however, that the requestor may be the authorized representative of one of the individuals whose information is at issue. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. Thus, if the requestor is the authorized representative of the individual at issue, then the requestor has a special right of access to the compilation of the named individual's criminal history, to the extent it exists. To the extent the requestor has a special right of access, we will address your remaining arguments against disclosure.

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 state the information within Exhibit B pertains to a closed case that did not result in conviction or deferred adjudication. Accordingly, we find section 552.108(a)(2) is applicable to Exhibit B.

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). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with

the exception of basic information, the city may withhold Exhibit B under section 552.108(a)(2).

With regard to Exhibit E, we note that you have marked driver's license numbers within that exhibit. Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). We note, however, that section 552.130 protects privacy interests. As noted above, the requestor may be the authorized representative of one of the named individuals to whom the section 552.130 information pertains. Thus, the requestor may have a right of access to the Texas motor vehicle record information of this individual. *See* Gov't Code § 552.023 (section 552.023 gives a person or the person's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as subject of the information); Open Records Decision No. 481 at 4. If the requestor is acting as the authorized representative of one of the individuals, then she has a right of access to that individual's driver's license number, and the city may not withhold it under section 552.130. However, the city must withhold the information you have marked in Exhibit E under section 552.130 not belonging to the individual for whom the requestor may be acting as an authorized representative.[1]

In summary, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy. However, if the requestor is acting as an authorized representative, then the requestor has a special right of access to the compilation of the individual at issue to the extent it exists.[2] With the exception of basic information, the city may withhold Exhibit B under section 552.108(a)(2). The city must withhold the information you marked in Exhibit E under section 552.130 to the extent it pertains to an individual for whom the requestor is not acting as an authorized representative. The remaining 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.

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[1]We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers, without the necessity of requesting an attorney general decision.

[2]We note that because the requestor may have a special right of access to this information in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

[3]As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 367796

Enc. Submitted documents

c: Requestor
(w/o enclosures)