



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2010

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

OR2010-11939

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# 389527 (Cedar Park reference no. 10-451).

The City of Cedar Park (the "city") received a request for police report numbers 0609-0036, 0708-0357, and 0803-0023. You state the city will make some of the requested information, including basic information from the requested reports, available to the requestor with information redacted pursuant to Open Records Decision No. 684 (2009).¹ See Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted under section 552.108); see also Open Records Decision No. 127 (1976) (summarizing types of information considered basic 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.

The information in Exhibit C that pertains to report number 0803-0023 involves an alleged violation of section 32.51 of the Penal Code, which provides that "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers,

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

or uses . . . identifying information of another person without the other person's consent[.]” Penal Code § 32.51(b). For purposes of section 32.51, “identifying information” includes an individual's name and financial institution account number. *Id.* § 32.51(a)(1)(A); (C). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005, and provides as follows:

(a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

- (1) the name of the victim;
- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code;
and
- (4) the results of any investigation.

(b) On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. In this instance, the information related to report number 0803-0023 involves the alleged fraudulent use of identifying information, which constitutes a violation of section 32.51 of the Penal Code. The requestor in this instance is the victim listed in the report and the alleged offense occurred after September 1, 2005. Accordingly, the information related to report number 0803-0023 is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor except to the extent it contains confidential information. You seek to withhold the report under section 552.108 of the Government Code. However, section 552.108 does not make information confidential by law. Additionally, exceptions in the Act generally cannot impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, section 552.108 is not applicable to this information and it may not be withheld on that basis. Instead, the information related to report number 0803-0023 must be released to this requestor in its entirety pursuant to article 2.29 of the Code of Criminal Procedure.

You claim the remaining information in Exhibit C, which pertains to report numbers 0609-0036 and 0708-0357, is excepted under section 552.108 of the Government Code. Section 552.108(a)(2) 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 the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You represent the remaining information in Exhibit C relates to cases that have been closed, and that did not result in conviction or deferred adjudication. Thus, we agree this information is subject to section 552.108(a)(2) of the Government Code, and the city may withhold the remaining information in Exhibit C on that basis.

The information in Exhibit D is subject to section 552.130 of the Government Code.² Section 552.130 provides that information relating to a motor vehicle operator’s license or driver’s license issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1). Exhibit D is a printout from the Texas Department of Public Safety that consists of information related to an individual’s driver’s license. Therefore, the city must withhold Exhibit D under section 552.130 of the Government Code.³

In summary, the city may withhold the information we marked in Exhibit C that pertains to report numbers 0609-0036 and 0708-0357 under section 552.108(a)(2) of the Government Code. The remaining portions of Exhibit C must be released.⁴ The city must withhold Exhibit D under section 552.130 of the Government Code.

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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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

⁴We note the information being released contains information to which the requestor has a right of access. Because such information would be confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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 'Bob Davis', written in a cursive style.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 389527

Enc. Submitted documents

cc: Requestor
(w/o enclosures)