



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2010

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

OR2010-12412

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# 390471 (Cedar Park Reference No. 10-480).

The City of Cedar Park (the "city") received a request for report number 1006-0011. You state you will release some information to the requestor. You claim that portions of the submitted information are 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 the submitted information involves an alleged violation of section 32.51 of the Penal Code. Section 32.51 provides that "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses . . . identifying information of another person without the other person's consent[.]" Penal Code § 32.51(b)(1). 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. For purposes of article 2.29, an offense is committed on or after September 1, 2005 if no "element of the offense occurs before that date." Act of June 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885. The submitted information pertains to unauthorized use of a credit card or debit card, which constitutes an alleged violation of section 32.51. Additionally, the alleged offense occurred after September 1, 2005. We note as the victim's insurance company, the requestor may be the authorized representative of the victim. However, because we are unable to determine, based on the information provided, whether the requestor is the victim's representative, we must rule in the alternative.

If the requestor is the victim's authorized representative, then the submitted information is subject to article 2.29 and must be released to the requestor, except to the extent it contains information that is confidential by law. *See* Crim. Proc. Code art. 2.29(b). You seek to withhold portions of the submitted information under sections 552.108, 552.130, and 552.147 of the Government Code. Section 552.108 does not make information confidential and is a general exception to disclosure. As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Furthermore, as you acknowledge, subsection 552.147(b) generally permits a governmental body to redact a living person's social security number without seeking a decision from this office. *See* Gov't Code § 552.147(b). However, section 552.147 does not make information confidential by law. *See id.* § 552.147(a) (section 552.147 does not make the social security number of a living person confidential). Thus, in the event the requestor is the victim's authorized representative, the city may not withhold any portion of the submitted information under section 552.108 or section 552.147. However, you also raise section 552.130 of the Government Code, which makes information confidential. *See, e.g., id.* § 552.130(b). Accordingly, in the event the requestor is the victim's representative for purposes of

article 2.29, we will address the applicability of section 552.130 to the submitted information.

If the requestor is not the victim's authorized representative, article 2.29 does not apply to the submitted information, and we will address your arguments under sections 552.108 and 552.130 of the Government Code accordingly.¹ Additionally, we note portions of the submitted information are subject to section 552.136 of the Government Code; therefore, we will address that exception as well.²

Next, we address your argument under section 552.108 of the Government Code for Exhibit C, to the extent the requestor is not the authorized representative of the victim for purposes of article 2.29. Section 552.108(a)(1) 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 body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See* Gov't Code §§ 552.108(a)(1), 301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide a representation from the city's police department showing, that Exhibit C relates to an ongoing criminal investigation. Based on your representation and our review of the submitted information, we conclude that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, if the requestor is not the victim's authorized representative, then the city may withhold Exhibit C under section 552.108(a)(1) of the Government Code.

Section 552.136(b) of the Government Code provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). Thus, if the requestor is not acting as the individual at issue's authorized representative, then the city must withhold the credit card numbers we have marked in Exhibit B under section 552.136 of the Government Code.

¹You state you will redact portions of this information pursuant to section 552.147(b) of the Government Code, which authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision. *See id.* § 552.147(b).

²The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). Upon review, we find the information you have marked, in addition to the information we have marked, consists of Texas motor vehicle record information for section 552.130 purposes. If the requestor is not acting as the victim's authorized representative, then the city must withhold the remaining marked information in Exhibit B under section 552.130 of the Government Code. Alternatively, if this requestor is the victim's authorized representative, then with the exception of the victim's information, the city must withhold the marked information in Exhibits B and C under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or individual's authorized representative asks governmental body to provide information concerning that individual).³

In summary, if the requestor is the authorized representative of the victim listed in the submitted information, then the city: 1) must withhold the marked information in Exhibits B and C that does not pertain to the victim under section 552.130 of the Government Code; and 2) must release the remaining information to the requestor in accordance with article 2.29 of the Code of Criminal Procedure.⁴ In the event the requestor is not the victim's authorized representative, the city: 1) may withhold Exhibit C under section 552.108(a)(1) of the Government Code; 2) must withhold the marked information in Exhibit B under sections 552.130 and 552.136 of the Government Code; and 3) must release the remaining information to the requestor.

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.

³As you acknowledge, 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 license plate numbers and driver's license numbers under section 552.130 of the Government Code and credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note this information contains the victim's social security number, credit card numbers, and Texas motor vehicle information, to which the requestor would have a right of access. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Accordingly, if the city receives another request for this information from an individual other than one with a right of access under section 552.023, then the city must request another determination from this office.

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 "James McGuire", with a horizontal line extending to the right.

James McGuire
Assistant Attorney General
Open Records Division

JM/tp

Ref: ID# 390471

Enc. Submitted documents

c: Requestor
(w/o enclosures)