



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2010

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

OR2010-15469

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# 397233 (City Reference number 10-609).

The City of Cedar Park (the "city") received a request for information pertaining to a specified address. You state the city will release some of the responsive information. 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 that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy. Common-law privacy protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. 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 claim that Exhibits B through D consist of a compilation of a private citizen's criminal history. In this instance, the request is for information pertaining to a specified address. Thus, this request does not require the city to compile any particular individual's criminal history and does not implicate the privacy interests of any individual. Accordingly Exhibits B through D may not be withheld as a criminal history compilation under section 552.101 in conjunction with common-law privacy. However, we will consider your remaining arguments against disclosure of the submitted information.

Next, you raise section 552.101 in conjunction with the common-law informer's privilege for the information you have marked in Exhibit E. Texas courts have long recognized the common-law informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961))*. The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5*. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*.

You state that the information you have marked in Exhibit E reveals the identity of an individual who reported a possible criminal violation to the city's police department. Based upon your representations and our review, we conclude that the city may withhold the information you have marked in Exhibit E under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Next, you claim Exhibits B and C are excepted under section 552.108(a)(1) of the Government Code. 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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits B and C relate to pending criminal investigations with the city's police

department. Based upon your representations and our review, we conclude that the release of Exhibits B and C 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). Thus, section 552.108(a)(1) is applicable to Exhibits B and C.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the city may withhold Exhibits B and C under section 552.108(a)(1).¹ We note that you have the discretion to release all or part of Exhibits B and C that is not otherwise confidential by law. Gov't Code § 552.007.

Next, you have marked information in Exhibits D and E under section 552.130 of the Government Code. Section 552.130 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[.]” *Id.* § 552.130(a)(1)-(2). You state you are withholding information pursuant to 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 and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684. We note you have marked Texas motor vehicle record information pertaining to the requestor. Because section 552.130 protects privacy interests, the requestor has a right of access to her own Texas motor vehicle record information under section 552.023 and it may not be withheld from her under section 552.130 and pursuant to Open Records Decision No. 684. *See id.* at 11-13; *see also* Gov't Code § 552.023(b). Upon review, however, we agree that, with the exception of the information we have marked for release, the city may withhold the Texas driver’s license numbers and Texas license plate numbers you have marked in Exhibits D and E pursuant to Open Records Decision No. 684, without seeking a decision from our office. In addition, we find, with the exception of the information we have marked for release, the city must withhold the remaining information you have marked in Exhibit E under section 552.130 of the Government Code.

In summary, the city may withhold the information you have marked in Exhibit E under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. With the exception of basic information, which must be released, the city may

¹As our ruling is dispositive for Exhibits B and C, we need not address your remaining arguments against the disclosure of portions this information.

withhold Exhibits B and C under section 552.108(a)(1) of the Government Code. With the exception of the information we have marked for release, the city must withhold the Texas motor vehicle record information you have marked in Exhibits D and E under section 552.130 of the Government Code. The remaining information must be released.

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, 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/eb

Ref: ID# 397233

Enc. Submitted documents

c: Requestor
(w/o enclosures)