



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2011

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

OR2011-14913

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# 432921 (Ref. Nos. 11-728 and 11-729).

The City of Cedar Park (the "city") received a request for: (1) disturbances involving, charges filed against, and pending charges against a named individual since January 1, 2008, (2) disturbances involving, charges filed against, and pending charges against another named individual, who is the requestor's client, as well as reports in which the client is a victim, and (3) reports of disturbances at a specified address since January 1, 2008. The city received a request from a different requestor for information pertaining to police calls to a specified address between January 1, 2006 and August 8, 2011, including two specified cases. You state the city has released some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) 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 . . . 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 case numbers 0807-0411 and 1107-0271 relate to inactive criminal investigations that are pending additional leads.

We note case number 0807-0411 pertains to an alleged violation of section 28.03(b)(3) of the Penal Code (criminal mischief). A violation of section 28.03(b)(3) is a misdemeanor offense. *See* Penal Code § 28.03(b)(3). Under article 12.02 of the Code of Criminal Procedure, an indictment, information, or complaint in a misdemeanor case of criminal mischief “may be presented within two years from the date of the commission of the offense, and not afterward.” Crim. Proc. Code art. 12.02(a)-(b). In this instance, the offense in 0807-0411 allegedly occurred in 2008. You state the city received the request for this information on August 3, 2011. You do not indicate any prosecution of the alleged offense was pending on the date of the city’s receipt of the request. Thus, based on your representations and our review of the information at issue, we find that prosecution of the alleged offense is barred by the statute of limitations. Accordingly, we conclude you have not demonstrated the release of the portion of case number 0807-0411 that you seek to withhold would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).¹ Therefore, the city may not withhold the information at issue in case number 0807-0411 under section 552.108(a)(1).¹

We note, however, the statute of limitations in case number 1107-0271 has not run. Based upon your representation and our review, we conclude the release of the information pertaining to case number 1107-0271 would interfere with the detection, investigation, or prosecution of crime. *See id.* Thus, we find the city may withhold the portion of case number 1107-0271 you seek to withhold under section 552.108(a)(1).

Next, you claim a portion of case number 1107-0235 is excepted from disclosure under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A)

¹We note case number 0807-0411 is only responsive to the first request, and that requestor has a right of access to some of the information being released. *See* Gov’t Code § 552.023(b) (“person or a person’s authorized representative has 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 public disclosure by laws intended to protect that person’s privacy interests”).

(governmental body must provide comments explaining why exceptions raised should apply to information requested). You state case number 1107-0235 relates to a case that did not result in conviction or deferred adjudication. Based on your representation and our review, we find the city may withhold the portion of case number 1107-0235 that you seek to withhold under section 552.108(a)(2).

The city seeks to withhold some of the information in Exhibit B under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)). We note section 552.130 protects personal privacy. *See* Gov't Code § 552.023(b) ("person or a person's authorized representative has 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 public disclosure by laws intended to protect that person's privacy interests"). We also note the city does not seek to withhold from the first requestor his client's motor vehicle information or from the second requestor her own motor vehicle information; rather, the city only seeks to withhold information under section 552.130 to which the requestors do not have a right of access.² Accordingly, the city must withhold the information you have marked under section 552.130 of the Government Code in Exhibit B.

In summary, the city may withhold the portion of case number 1107-0271 you seek to withhold under section 552.108(a)(1) of the Government Code and the portion of case number 1107-0235 that you seek to withhold under section 552.108(a)(2) of the Government Code. The city must withhold the information you have marked under section 552.130 of the Government Code in Exhibit B. The city must release the remaining information.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.

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

²The city has submitted a separate "Exhibit B" in response to each of the requests, each of which has been marked accordingly.

³As our ruling is dispositive, we need not address your remaining argument under section 552.147 of the Government Code.

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 cursive script that reads "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 432921

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)