



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2011

Ms. Leann M. Quinn
City Secretary
City of Cedar Park
600 North Bell Drive
Cedar Park, Texas 78613

OR2011-15659

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# 434233 (Cedar Park Reference #11-756 and #11-855).

The City of Cedar Park (the "city") received two requests for information pertaining to a specified police report regarding a specified incident on a specified date. You state you are releasing some of the requested information. You claim the remaining requested 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.

Initially, we note that Exhibit C includes intoxilyzer results. Section 724.018 of the Transportation Code provides that on request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. Transp. Code § 724.018. Here, the first requestor is the individual who submitted the specimen at the request of a peace officer. Thus, the city must release the intoxilyzer results to the first requestor.

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). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex*

parte Pruitt, 551 S.W.2d 706 (Tex. 1977). You state, and provide a statement showing, the submitted information pertains to a criminal case that is pending prosecution. Based upon your representation, we conclude the release of Exhibit C will 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) (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). Therefore, with the exception of the intoxilyzer results which must be released to the first requestor, the city may withhold Exhibit C under section 552.108(a)(1) of the Government Code.¹

You raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege for the information you have marked in Exhibit B. 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. This exception encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's 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." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law* § 2374, at 767 (J. 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.

You state that the complainant reported a possible violation of section 49.04 of the Penal Code to the Cedar Park Police Department. Based on your representations, we conclude that the informer's identifying information, which you have marked, may be withheld under section 552.101 in conjunction with the common-law informer's privilege.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit 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). Upon review, we find the city must withhold the motor vehicle information you have marked under section 552.130 of the Government Code.

¹As our ruling is dispositive as to Exhibit C, we need not address your remaining arguments against disclosure.

In summary, with the exception of the intoxilyzer results which must be released to the first requestor, the city may withhold Exhibit C under section 552.108(a)(1) of the Government Code. The city may also withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the motor vehicle information you have marked in Exhibit B under section 552.130 of the Government Code. The remaining information must be released.²

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/sdk

Ref: ID# 434233

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

²We note that the requestors have a special right of access to some of the information being released. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Therefore, if the city receives another request for this particular information from different requestors, then the city should again seek a ruling from this office.