



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2011

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

OR2011-15970

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# 434634 (reference numbers 11-767 and 11-768).

The City of Cedar Park (the "city") received two requests for information about two incidents that took place at the same address. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides, in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The offense and call reports numbered 1107-1155 (OCA #1107-0081) and exhibit C concern juveniles engaged in delinquent conduct and are therefore confidential under section 58.007(c). Accordingly, these records must be withheld in their entirety under section 552.101.¹

Next, you claim a portion of call report number 1107-4227 (OCA #1107-0284) is excepted from disclosure under section 552.101 in conjunction with the common-law informer’s privilege. Section 552.101 encompasses the informer’s privilege, which Texas courts have long recognized. *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 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.” *See 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 (1988)*. 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)*. We conclude the city may withhold the telephone number you

¹As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

marked in call report number 1107-4227 under section 552.101 in conjunction with the common-law informer's privilege.

You seek to withhold exhibit B in reference number 11-767 and exhibit D in reference number 11-768 from disclosure under section 552.108 of the Government Code. Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have provided a statement from the Cedar Park Police Department indicating these exhibits relate to a pending prosecution. Based on this representation, we find release of these exhibits at this time 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) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we conclude section 552.108(a)(1) is applicable in this instance. Thus, the city may withhold exhibit B in reference number 11-767 and exhibit D in reference number 11-768 from disclosure under section 552.108(a)(1) of the Government Code.

Finally, you state you are redacting driver’s license numbers from the offense and call reports numbered 1107-4227 under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009). Open 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 numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22* (to be codified at Gov’t Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22* (to be codified at Gov’t Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

In summary, the offense and call reports numbered 1107-1155 and exhibit C are confidential under section 58.007(c) of the Family Code and must be withheld from disclosure in their entirety under section 552.101 of the Government Code. The city may withhold the telephone number you marked in call report number 1107-4227 under section 552.101 in

conjunction with the common-law informer's privilege. The city may withhold exhibit B in reference number 11-767 and exhibit D in reference number 11-768 from disclosure under section 552.108(a)(1) of the Government Code. In redacting driver's license numbers from the offense and call reports numbered 1107-4227, the city must comply with the amendments to section 552.130 of the Government Code.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,



Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/sdk

Ref: ID# 434634

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

²We note the offense report number 1107-4227 contains social security numbers. Section 552.147 of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).