



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2011

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

OR2011-16188

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# 436003 (Reference No. 11-799).

The Cedar Park Police Department (the “department”) received a request for information pertaining to a specified accident. You state some information has been made available to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 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 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 state Exhibit C relates to a pending criminal prosecution. Based on your representation, we find release of Exhibit 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) (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, the department may withhold Exhibit C under section 552.108(a)(1) of the Government Code.

You assert the department redacted driver's license and license plate numbers under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You have marked some additional information you seek to withhold under section 552.130. Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country and information related to 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). Accordingly, the department must withhold the motor vehicle record information you have marked in Exhibit B under section 552.130 of the Government Code.

You also have marked information in Exhibit B under section 552.136 of the Government Code. Section 552.136 provides "[n]otwithstanding any other provision of [the Act], 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); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number constitutes an "access device" for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Therefore, the department must withhold the insurance policy numbers you have marked in Exhibit B under section 552.136 of the Government Code.

We note some of the remaining information is excepted from disclosure pursuant to section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which 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 demonstrated. *Id.* at 681-82. This office has found that information that reflects an individual's personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted

¹Open 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 and license plate 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 supercedes 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.

from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545(1990).

Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, we determine the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary: The department may withhold Exhibit C under section 552.108(a)(1) of the Government Code. The department must withhold (1) the motor vehicle record information you have marked in Exhibit B pursuant to section 552.130 of the Government Code; (2) the insurance policy numbers you have marked in Exhibit B under section 552.136 of the Government Code; and (3) the information we have marked under section 552.101 in conjunction with common-law privacy. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 436003

Enc. Submitted documents

c: Requestor
(w/o enclosures)