



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2012

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

OR2012-04025

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# 447997 (Reference Numbers 12-195 and 12-236).

The City of Cedar Park (the "city") received two requests from the same requestor for information pertaining to a specified incident. You state the city will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that the information you have submitted involves an alleged violation of section 32.51 of the Penal Code, which provides that "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of . . . identifying information of another person without the other person's consent[.]" Penal Code § 32.51(b)(1). For purposes of section 32.51, "identifying information" includes an individual's name and financial institution account number. *Id.* § 32.51(a)(1)(A), (C). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005 and provides:

(a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

- (1) the name of the victim;
- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and
- (4) the results of any investigation.

(b) On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For purposes of article 2.29, an offense is committed on or after September 1, 2005 if no "element of the offense occurs before that date." Act of June 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, the submitted information pertains to an alleged violation of section 32.51. We note the requestor is listed as the victim in the submitted information, and the alleged offense occurred after September 1, 2005. Therefore, the submitted information is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor, except to the extent that it contains confidential information. *See* Crim. Proc. Code art. 2.29. You claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the submitted information may not be withheld under section 552.108 of the Government Code. However, you also raise section 552.130 of the Government Code for some of the submitted information. As section 552.130 is a confidentiality provision, we will address its applicability to the submitted information.

You indicate you will redact motor vehicle record information as permitted by section 552.130(c) of the Government Code and Open Records Decision No. 684 (2009). Section 552.130(c) authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Open Records Decision No. 684 permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2), without requesting an attorney general decision. However, we note any other information made

confidential by section 552.130(a)(2) is not subject to section 552.130(c) or Open Records Decision No. 684 and therefore may not be withheld without requesting a decision from this office. Thus, in addition to the Texas license plate numbers the city will redact pursuant Open Records Decision No. 684, the city must withhold the vehicle identification numbers you have marked under section 552.130(a)(2) of the Government Code.

In summary, with the exception of the motor vehicle record information the city must withhold under section 552.130 of the Government Code, the city must release the submitted information to the requestor pursuant to article 2.29 of the Code of Criminal Procedure.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/ag

Ref: ID# 447997

Enc. Submitted documents

c: Requestor
(w/o enclosures)