



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2012

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2012-05700

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# 451275 (Reference Number 12-313).

The City of Cedar Park (the “city”) received a request for police report number 1201-0398. You state the city will release some of the requested information, including basic information. *See* Gov’t Code § 552.108(c) (basic information about arrested person, arrest, or crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim the submitted 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 some of the submitted records were created after the request was received. This decision does not address the public availability of the non-responsive information, which we have marked, and that information need not be released in response to the present request.¹

Section 552.108(a)(1) 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 the release of the requested

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

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 inform us, and provide a statement from the Cedar Park Police Department stating, that Exhibit C relates to a pending criminal prosecution. Based on these representations and our review, we conclude the release of this information 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, we conclude the city may withhold the information in Exhibit C under section 552.108(a)(1) of the Government Code.²

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 section encompasses the doctrine of common-law privacy. Common-law privacy 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. *See 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. *See id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See Open Records Decision No. 455* (1987) (prescription drugs, illnesses, operations, and physical handicaps). You claim that portions of Exhibit B are protected by common-law privacy. Upon review, we agree the information you have marked and the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code. Section 411.192 governs the release of all information maintained by the Texas Department of Public Safety (“DPS”) concerning the licensure of individuals to carry a concealed handgun, and provides as follows:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes

²As our ruling for this information is dispositive, we need not address your remaining arguments against its release.

the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Gov't Code § 411.192(a), (b). It appears the city received the concealed handgun license information we have marked in Exhibit B from DPS. In this instance, the requestor is not a criminal justice agency, nor is the requestor a license holder whose information is at issue. Further, we note section 411.193 is not applicable in this instance. *See id.* § 411.193 (making statistical report including number of licenses issued, denied, revoked, or suspended during preceding month available to public). Therefore, the city must withhold the information we have marked in Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.³

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state, or another state or country, is excepted from public release. *See id.* § 552.130(a)(1)-(2). You have marked driver's license and motor vehicle record information under section 552.130. Upon review, we conclude the city must withhold this information, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code.⁴

We note the remaining information in Exhibit B contains a personal e-mail address. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).⁵ *Id.* § 552.137(a)-(c). We have marked an e-mail address in Exhibit B that does not appear to be of a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the marked e-mail

³As our ruling for this information is dispositive, we need not address your remaining arguments against its release.

⁴We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

address under section 552.137 of the Government Code, unless the individual to whom this e-mail address belongs affirmatively consents to its release.⁶

In summary, the city may withhold the responsive information in Exhibit C under section 552.108 of the Government Code. The city must withhold the information marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy and section 411.192 of the Government Code. The city must withhold the information marked in Exhibit B under section 552.130 of the Government Code. The city must withhold the e-mail address marked in Exhibit B under section 552.137 of the Government Code, unless the individual to whom this e-mail address belongs affirmatively consents to its release. The city must release the remaining information in Exhibit B.⁷

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

⁶We note Open Records Decision No. 684 is also a previous determination to all governmental bodies authorizing them to withhold a personal e-mail address under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

⁷We note the information being released contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a) (person has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

Ref: ID# 451275

Enc. Submitted documents

c: Requestor
(w/o enclosures)