



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 15, 2012

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

OR2012-07217

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# 453608 (Cedar Park Ref. No. 12-407).

The City of Cedar Park (the “city”) received a request for police report numbers 1201-0189, 1201-0398, 1203-0015, and 1203-0036. 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 state you will redact the motor vehicle information you have marked under section 552.130 of the Government Code<sup>1</sup> and the social security numbers you have marked under section 552.147 of the Government Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that some of the submitted information was the subject of previous rulings by this office. In Open Records Letter No. 2012-02818 (2012), this office ruled that police report

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<sup>1</sup>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. 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). *Id.* § 552.130(d), (e).

<sup>2</sup>Section 552.147(b) 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 under the Act. *See* Gov’t Code § 552.147(b).

number 1201-0189 may be withheld under section 552.108(a)(2) of the Government Code. In Open Records Letter No. 2012-05700, this office ruled that, with the exception of the information that was created after the date of that request and was thus, not responsive to that request, the city may withhold certain information under sections 552.101, 552.108, 552.130, and 552.137 of the Government Code, but must release the remaining information. As we have no indication the law, facts, and circumstances on which the prior rulings were based have changed, the city must continue to rely on the prior rulings as previous determinations and withhold or release the submitted information we previously ruled upon in accordance with Open Records Letter Nos. 2012-02818 and 2012-05700. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the previous decisions, we will address your arguments.

Next, we note the submitted information contains an emergency protective order that has been filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless the information is made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). The court-filed document we marked is subject to section 552.022(a)(17). You seek to withhold this information under section 552.108 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.108; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential under the Act. Therefore, the city may not withhold the marked court-filed document under section 552.108. As you do not raise any other exceptions to disclosure of this information, the marked court-filed document must be released.

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 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, and provide a statement from the city’s police department confirming, the remaining information contained in Exhibits D, E, and F relate to ongoing criminal investigations and a prosecution. Based on your representation and our review, we conclude release of the remaining information contained in Exhibits D, E, and F would interfere with the detection, investigation, or prosecution of a 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 per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the city may withhold the remaining information in Exhibits D, E, and F under section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state, and provide a statement from the city's police department confirming, the information contained in Exhibit C relates to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Accordingly, the city may withhold the information contained in Exhibit C under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses 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). The type 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. *Id.* at 683. You assert portions of the remaining information contain information subject to common-law privacy. However, the requestor, as the individual to whom this information pertains, has a right of access to information concerning herself that would otherwise be withheld to protect her privacy. *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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, the city may not withhold any of the remaining information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that 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 is excepted from public release. Gov't Code § 552.130(a)(1). The city must withhold the information you have marked under section 552.130.

We note portions of the remaining information are subject to section 552.137 of the Government Code.<sup>3</sup> Section 552.137 provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body

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<sup>3</sup>The 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).

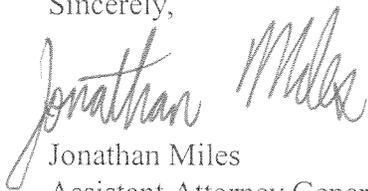
is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its release.

In summary, the city must continue to rely on Open Records Letters Nos. 2012-02818 and 2012-05700 as previous determinations and withhold or release the submitted information we previously ruled upon in accordance with Open Records Letter Nos. 2012-02818 and 2012-05700. The city must release the protective order, which we have marked, pursuant to section 552.022(a)(17) of the Government Code. The city may withhold the remaining information in Exhibits D, E, and F under section 552.108(a)(1) of the Government Code and Exhibit C under section 552.108(a)(2) of the Government Code. The city must withhold the information you have marked under section 552.130 and withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its release. 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 453608

Enc. Submitted documents

c: Requestor  
(w/o enclosures)