



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2012

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

OR2012-13088

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# 462519 (PIR No. 12-595).

The City of Cedar Park (the "city") received a request for all police reports and audio recordings concerning a specified location from March 2012 to May 2012, specifically including reports made on April 9 or April 10, 2012, and May 25, 2012. You state you will make some of the requested information available to the requestor. You claim portions of the submitted information are 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.

We turn first to your assertion of section 552.108 of the Government Code, as it is potentially the most encompassing. 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 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 state Exhibits C through F relate to pending criminal prosecutions and inform us release of the information contained in those exhibits could interfere with the prosecutions. *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). Based on your representation and our review, we agree the city may withhold Exhibits C through F under section 552.108(a)(1) of the Government Code.¹

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). In Open Records Decision No. 506 (1988), this office determined the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." ORD 506 at 2. We noted the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.*

You explain the cellular telephone numbers you have marked in Exhibit B are internal cellular telephone numbers used by city police department employees in the field to carry out their law enforcement responsibilities. You explain the release of this information would interfere with the ability of department employees to perform their job duties. Based on your representations and our review, we agree the city may withhold the cellular telephone numbers you have marked in Exhibit B under section 552.108(b)(1) 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." Gov't Code § 552.101. Section 552.101 encompasses information protected by statute, such as laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10–12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't

¹As our ruling is dispositive, we do not consider your remaining claimed exceptions for this information.

Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Upon review, we find the information you have marked in Exhibit B constitutes confidential CHRI that the city must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (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 established. *Id.* at 681-82. 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. Upon review, we find the information you have marked, and the additional information we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must generally withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor is the spouse of the individual whose privacy interests are at issue. Thus, the requestor may be the authorized representative of the individual whose privacy interests are at issue, and may have a right of access to information pertaining to that individual that would otherwise be confidential under common-law privacy. *See Gov't Code § 552.023(a)* (“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 that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Because we are unable to determine whether the requestor is the authorized representative of the individual whose privacy interests are at issue, we must rule conditionally. Accordingly, if the requestor is not acting as the authorized representative of the individual with the privacy interest, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as the authorized representative of the individual whose privacy interests are at issue, the city may not withhold the marked information from this requestor.

Section 552.130 of the Government Code provides 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 Gov’t Code § 552.130.* Some of the information you have marked pertains to the requestor’s driver’s license information, the requestor’s spouse’s driver’s license information, or to vehicles that may be owned by the requestor or the requestor’s spouse. We note section 552.130 protects

privacy. The requestor has access to her own driver's license and motor vehicle information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481. Thus, if the requestor owns any of the vehicles at issue, then she has a right of access to her own motor vehicle record information under section 552.023 of the Government Code. If the requestor's spouse owns any of the vehicles at issue and if the requestor is the authorized representative of her spouse, then the requestor has a right of access to her spouse's motor vehicle record information under section 552.023 of the Government Code. However, if the requestor's spouse owns any of the vehicles at issue and if the requestor is not the authorized representative of her spouse, then the city must withhold the motor vehicle record information you have marked pertaining to those vehicles under section 552.130 of the Government Code. Further, a portion of the driver's license information you have marked pertains to the requestor's spouse. If the requestor is acting as her spouse's authorized representative, then she has a special right of access to her spouse's driver's license information under section 552.023 of the Government Code and it must be released to her. If the requestor is not acting as her spouse's authorized representative, then the city must withhold the driver's license information pertaining to her spouse under section 552.130 of the Government Code. In either case, the city must withhold the additional motor vehicle record information we have marked under section 552.130 of the Government Code.

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. Gov't Code § 552.147. However, we note that the social security numbers you have marked belong to the requestor's spouse. Thus, if the requestor is acting as her spouse's authorized representative, she has a right of access to her spouse's social security number pursuant to section 552.023. *See id.* § 552.023. Accordingly, pursuant to section 552.023, the requestor has a right of access to her spouse's social security number if the requestor is acting as his authorized representative, and the city may not withhold this information under section 552.147 of the Government Code. *See id.* § 552.023. If the requestor is not acting as the authorized representative of her spouse, then the city may withhold the social security numbers at issue under section 552.147.

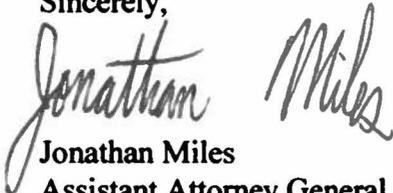
In summary, the city may withhold Exhibits C through F under section 552.108(a)(1) of the Government Code. The city may withhold the cellular phone numbers of police officers you have marked in Exhibit B under section 552.108(b)(1) of the Government Code. The city must withhold the CHRI you have marked under section 552.101 in conjunction with chapter 411 of the Government Code and federal law. If the requestor is not acting as the authorized representative of the individual with the privacy interest, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor's spouse owns any of the vehicles at issue and if the requestor is not the authorized representative of her spouse, then the city must withhold motor vehicle record information pertaining to the vehicles at issue. Further, if the requestor is not acting as the authorized representative of her spouse, then the city must withhold the driver's license information concerning the requestor's spouse under section 552.130 of the Government Code. The city must withhold the motor vehicle record information we have

marked under section 552.147 of the Government Code. If the requestor is not acting as the authorized representative of her spouse, the city must withhold the spouse's social security numbers under section 552.147 of the Government Code. The remaining information must be released.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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 462519

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released in this instance includes information that may be confidential with respect to the general public. See Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.