



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2012

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

OR2012-14821

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# 465349 (Cedar Park Ref. No. 12-669).

The City of Cedar Park (the "city") received a request for a specified police report. You state some of the requested information will be released to the requestor. You also state the city will redact driver's license numbers pursuant to section 552.130(c) of the Government Code.¹ You claim the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides, in relevant part:

¹Section 552.130(c) of the Government Code 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).

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108(a)(1) or section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general.

You state Exhibit C relates to a pending criminal investigation. You also provide correspondence from the city police department that states the case at issue is inactive pending further information. We note, however, the information at issue pertains to a burglary of a habitation and simple assault that occurred in 2006. The statute of limitations for burglary of a habitation is five years. *See* Penal Code § 30.02(c)(2) (burglary is felony of second degree if committed in habitation); Crim. Proc. Code art. 12.01(4)(B) (indictment for burglary may be presented within five years from date of commission of the offense, and not afterward). The statute of limitations for simple assault is two years. *See* Penal Code §§ 22.01(b) (offense under section 22.01(a)(1) is a Class A misdemeanor); Crim. Proc. Code arts. 12.02(a) (indictment or information on Class A misdemeanor may be presented within two years from date of commission of offense, and not afterward). More than five years have elapsed since the events giving rise to the investigation, and you have not informed this office any criminal charges were filed within the limitations period. Thus, we find you have not demonstrated that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Likewise, you have not explained how or why release of the submitted report would interfere with law enforcement or crime prevention. *See id.* § 552.108(b)(1). Therefore, the city may not

withhold this information under section 552.108(a)(1) or 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.”² *Id.* § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if: (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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 a portion of Exhibit C, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. As no further exceptions are raised, Exhibit C must be released.³

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.

²The 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).

³We note the information to be released includes the requestor’s driver’s license number, which the city would be required to withhold from the general public under section 552.130(a)(1) of the Government Code. *See* Gov’t Code § 552.130(a)(1). Because section 552.130 protects personal privacy, the requestor has a right of access to her driver’s license number under section 552.023 of the Government Code. *See id.* § 552.023(a). As discussed above, section 552.130(c) authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See id.* § 552.130(c). Thus, if the city receives another request for this same information from a person who would not have a right of access to the requestor’s driver’s license number, section 552.130(c) authorizes the city to redact her driver’s license number. We further note the information being released contains the requestor’s social security number. 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. The requestor, however, has a right of access to her own social security number. *See generally id.* § 552.023(b).

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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 465349

Enc. Submitted documents

c: Requestor
(w/o enclosures)