



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2012

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

OR2012-18261

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# 471987 (Cedar Park Nos. 12-802 and 12-841).

The City of Cedar Park (the "city") received a request for all information regarding a named individual and information pertaining to a specified incident. The city received a second request for information regarding the specified incident. You state you will release some information to the requestors. You state the city will withhold driver's license numbers pursuant to section 552.130(c) of the Government Code.¹ You also state you will withhold social security numbers pursuant to section 552.147 of the Government Code.² You further state you will withhold a license plate number pursuant to Open Records Decision

¹Section 552.130 of the Government Code permits a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3), such as driver's license numbers, without the necessity of seeking a decision from the attorney general. *See* 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). *See id.* § 552.130(d), (e).

²Section 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(b).

No. 684 (2009).³ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

(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[.]

Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) 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 provide correspondence from the city's police department that states the case at issue is pending prosecution. Based on this representation, we conclude the release of Exhibit C 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*, 536S.W.2d 559 (Tex. 1976). Accordingly, we conclude the city may withhold Exhibit C under section 552.108(a)(1) of the Government Code.⁴

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 information protected by other statutes, such as section 411.083 of the Government Code which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to

³Open Records Decision No. 684 permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2) of the Government Code, without requesting an attorney general decision.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas 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 Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the Federal Bureau of Investigation ("FBI") number you have marked in Exhibit B constitutes CHRI generated by the FBI, which the city must withhold from both requestors under section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *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. *Id.* at 683. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (personal financial choices concerning insurance are generally confidential). Upon review, we find the information you have marked is highly intimate or embarrassing and of no legitimate public concern. Therefore the city must withhold the marked information from the respective requestors under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or

- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We find the city must withhold the information you have marked from the respective requestors under section 552.130 of the Government Code. We have marked an additional driver's license number in the information submitted in response to the first request. Section 552.130 protects personal privacy. The first requestor may be an authorized representative of the individual whose driver's license number we have marked. If so, the first requestor would have a right of access to the individual's private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023. Therefore, if the first requestor is the authorized representative of the individual concerned, then the individual's driver's license number we have marked may not be withheld from the first requestor under section 552.130 of the Government Code. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated if individual requests information concerning himself). If the first requestor is not the individual's authorized representative, then the city must withhold the driver's license number we have marked under section 552.130 of the Government Code.

Section 552.136 provides, "Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. Accordingly, the city must withhold the marked insurance policy numbers from the respective requestors under section 552.136 of the Government Code.

In summary, Exhibit C may be withheld by the city under section 552.108 of the Government Code. The city must withhold the marked CHRI from both requestors under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The city must withhold the marked information from the respective requestors under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information you have marked from the respective requestors under section 552.130 of the Government Code. If the first requestor is not acting as the authorized representative of the individual at issue, then the city must withhold the additional driver's license number we have marked under section 552.130 of the Government Code. If the first requestor is acting as the authorized representative, then he has a right of access to the information we have marked under section 552.130 of the Government Code. The city must withhold the marked

information from the respective requestors under section 552.136 of the Government Code. The remaining information must be released.⁵

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 471987

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

⁵The first requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023. Because such information would be confidential with respect to the general public, if the city receives another request for this information from an individual other than the requestor, the city must again seek a decision from this office.