



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2013

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

OR2013-01239

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# 476609 (City of Cedar Park Reference Nos. 13-069, 13-091).

The City of Cedar Park (the "city") received two requests for information pertaining to a specified case, including the prosecutor's file and all police records, including 9-1-1 telephone calls, police reports, and videos. You state the city does not have information responsive to portions of the requests.¹ You also state you will withhold the marked driver's license number subject to section 552.130(a)(1) of the Government Code pursuant to section 552.130(c) of the Government Code.² You further state you will release some information to the requestors. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you contend the requested prosecutor's file, to the extent it exists, is not subject to the Act because it consists of records of the judiciary. The Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Section 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). 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).

the transaction of official business by a governmental body.” Gov’t Code § 552.002(a)(1). The Act does not apply to records of the judiciary. *See id.* § 552.003(1)(B) (definition of governmental body under the Act specifically excludes the judiciary). Information that is “collected, assembled or maintained by or for the judiciary” is not subject to the Act. Gov’t Code § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) (“function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act.”). As stated above, the requestor seeks the city attorney’s prosecution file. We note a city’s attorney’s prosecution file is created and maintained by the city as part of the city attorney’s office’s investigation. Thus, to the extent the prosecution file exists, we find this information does not constitute records of the judiciary and is subject to the Act. Therefore, to the extent the prosecution file exists, it must be released. Gov’t Code § 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”³ Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator,

³The 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).

or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information; [and]

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(1)-(2). Upon review, we find the submitted information pertains to an investigation of alleged or suspected child abuse and is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code chapter 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). However, as you acknowledge, the first requestor is the legal representative of the child victim listed in the submitted report, and the second requestor is the parent of the child victim and is not alleged to have committed the suspected abuse. *See* Fam. Code § 261.201(k). Thus, the submitted information may not be withheld from either requestor on the basis of section 261.201(a). *Id.* Subsection 261.201(l)(1), however, states the personally identifiable information of a victim or witness who is under the age of eighteen and is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld from disclosure. *Id.* § 261.201(l)(1). Thus, the city must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with subsection 261.201(l)(1) of the Family Code. In addition, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You raise section 552.108 of the Government Code for Exhibit C. Thus, we will address your argument under section 552.108 for Exhibit C.

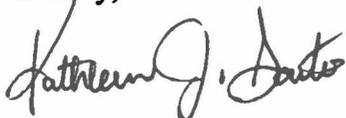
Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that 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 the information in Exhibit C relates to a criminal investigation that ended in a result other than conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to the information in Exhibit C. Accordingly, the city may withhold the information in Exhibit C under section 552.108(a)(2) of the Government Code.

In summary, the city must withhold the identifying information we have marked under section 552.101 in conjunction with section 261.201(1)(1) of the Family Code. The city may withhold the information in Exhibit C under section 552.108(a)(2) of the Government Code. The remaining information must be released.⁴

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/dls

⁴Because both requestors have a special right of access to the information being released in this instance, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office. *See* Fam. Code § 261.201(k); Gov't Code §§ 552.301,.302; Open Records Decision No. 673 (2001).

Ref: ID# 476609

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)