



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 8, 2013

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

OR2013-02232

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# 478383 (City Reference Nos. 13-135 and 13-138).

The City of Cedar Park (the "city") received two requests for (1) information related to two specified incidents and (2) information related to a specified case number and all employee incident reports and police reports regarding the Cedar Ridge Alzheimer's Specialty Unit during a specified time period. You state the city will release some information to the requestors. *See* Gov't Code § 552.108(c) (basic information about an arrest, arrested person, or crime cannot be withheld under section 552.108). You also state the city will redact driver's license information pursuant to section 552.130(c) of the Government Code, a social security number pursuant to section 552.147(b) of the Government Code, and certain information pursuant to Open Records Decision 684 (2009).<sup>1</sup> You claim the submitted

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<sup>1</sup>Section 552.130(c) of the Government Code authorizes governmental bodies 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. *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). 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. *Id.* § 552.147(b). Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision, including W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, direct deposit authorization forms under section 552.101 in conjunction with common-law privacy, and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting a decision from this office.

information is excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which is a representative sample.<sup>2</sup>

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 the information in Exhibits C and D relates to pending criminal cases. Based on your representation and our review, we conclude section 552.108(a)(1) is applicable to the information at issue. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the city may withhold the information in Exhibits C and D pursuant to section 552.108(a)(1) of the Government Code.<sup>3</sup>

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 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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked in Exhibit B is highly intimate or embarrassing and not of legitimate concern. Thus, the city must generally withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the second

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<sup>2</sup>We assume the “representative sample” of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against this information.

requestor is the daughter of the individual to whom the marked information pertains and may have a right of access to this information. *See* Gov't Code § 552.023 (“person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”). Thus, if the second requestor is acting as the authorized representative of her mother, then she has a right of access to the information we have marked in Exhibit B pursuant to section 552.023, and this information may not be withheld from her under section 552.101 in conjunction with common-law privacy. If the second requestor is not acting as the authorized representative of her mother, then the city must withhold the information we have marked in Exhibit B under section 552.101 in conjunction with common-law privacy. In either instance, the city must withhold all of the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy from the first requestor.

We note some of the remaining information in Exhibit B is subject to sections 552.130 and 552.137 of the Government Code.<sup>4</sup> Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country[.]” *See id.* § 552.130(a)(1)-(2). Therefore, we find the city must withhold generally withhold the information we have marked in Exhibit B under section 552.130 of the Government Code. However, we note some of the marked information in Exhibit B pertains to the second requestor’s mother. Section 552.130 is based on privacy principles; as such, the second requestor may have a right of access to her mother’s private information as her authorized representative. *See id.* § 552.023(a)-(b). Thus, if the second requestor has a right of access to her mother’s information, the city may not withhold this information from the second requestor, but must withhold the marked information in Exhibit B that does not pertain to the second requestor’s mother under section 552.130. Conversely, if the second requestor does not have a right of access to her mother’s information, the city must withhold all of the information marked under section 552.130 in Exhibit B from the second requestor. In either instance, the city must withhold all of the information we have marked in Exhibit B under section 552.130 of the Government Code from the first requestor.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail address we have marked is not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold this e-mail address under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release under section 552.137(b).

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<sup>4</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the city may withhold the information in Exhibits C and D under section 552.108(a)(1) of the Government Code. The city must withhold from both requestors the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code, if the second requestor is not acting as her mother's authorized representative. The city must also withhold the information we have marked in Exhibit B under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release under section 552.137(b) of the Government Code. The city must release the remaining information in Exhibit B.

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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 478383

Enc. Submitted documents

c: Two Requestors  
(w/o enclosures)