



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2009

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2009-04235

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# 338831.

The City of Cedar Park (the "city") received a request for three specified police reports. You state that the city will release some of the requested information to the requestor. You claim that portions of the remaining information are excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted documents include information that has been filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the court-filed information, which we have marked, under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the city may not withhold any of the marked information that has been filed with a court under section 552.108 of the

Government Code. However, as sections 552.130 and 552.147 of the Government Code are "other law" for the purposes of section 552.022, we will consider your claims under these exceptions for the information subject to 552.022. We will also consider your claim under section 552.108 for the information that is not subject to section 552.022.

~~Section 552.108 provides in pertinent part as follows:~~

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

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

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(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 [required public disclosure] if:

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

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state and provide documentation that incident number 0811-0272 relates to a pending criminal prosecution. Based on your representations and our review, we conclude that release of the information you have marked Exhibit D in incident number 0811-0272 would interfere with the detection, investigation, or prosecution of crime. Thus, section 552.108(a)(1) is applicable to the information you have marked Exhibit D in incident number 0811-0272 that is not subject to section 552.022. *See Houston Chronicle Publ'g Co.*

v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, with the exception of the information subject to section 552.022, the city may withhold the information you have marked Exhibit D in incident number 0811-0272 under section 552.108(a)(1) of the Government Code

Sections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *Id.* You state and provide documentation that incident numbers 0811-0298 and 0810-0334 pertain to criminal investigations by the city's police department that have been concluded with no charges being brought. Thus, you contend these investigations did not result in conviction or deferred adjudication. Based on your representations and our review, we find that section 552.108(a)(2) is applicable to the information you have marked Exhibits C and E in incident numbers 0811-0298 and 0810-0334. Accordingly, the city may withhold the information you have marked Exhibits C and E in incident numbers 0811-0298 and 0810-0334 under section 552.108(a)(2) of the Government Code.

You contend that some of the information subject to section 552.022 and the information you have marked in Exhibit B is subject to section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1). We note that section 552.130 of the Government Code protects personal privacy. Thus, the requestor has a right of access to her own driver's license information under section 552.023, and it may not be withheld under section 552.130. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). We have marked the requestor's driver's license information for release. The city must withhold the remaining Texas driver's license numbers you have marked, as well as the additional information we have marked, in Exhibit B and in the submitted information subject to section 552.022 under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.¹ *Id.* § 552.147. The

¹We note that 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.

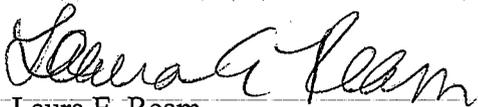
city may withhold the social security numbers you have marked in Exhibit B and in the submitted information subject to section 552.022 pursuant to section 552.147.

In summary, with the exception of the information subject to section 552.022(a)(17) of the Government Code, the city may withhold Exhibit D under section 552.108(a)(1) of the Government Code. The city may withhold Exhibits C and E under section 552.108(a)(2) of the Government Code. Except for the information we have marked for release, the city must withhold the driver's license numbers you have marked in Exhibit B and in the information subject to section 552.022 of the Government Code, as well as the additional information we have marked, under section 552.130 of the Government Code. The city may withhold the social security numbers you have marked in Exhibit B and in the information subject to section 552.022 of the Government Code under section 552.147 of the Government Code. The remaining information must be released to the requestor.

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 at (512) 475-2497.

Sincerely,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/dls

Ref: ID# 338831

Enc. Submitted documents

c: Requestor
(w/o enclosures)