



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 29, 2009

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

OR2009-13682

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# 356806 (City Reference No. 09-240).

The City of Cedar Park (the "city") received a request for information pertaining to a specified incident. You state that the city will release some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that Exhibit C includes a document 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 document, 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 the court-filed document in Exhibit C under section 552.108 of the Government Code. As no further exceptions against

its disclosure are raised, the city must release the court-filed document in Exhibit C to the requestor.

We will next consider your claim under section 552.108 of the Government Code for the information in Exhibit C that is not subject to section 552.022. Section 552.108 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 that Exhibit C is related to a pending criminal prosecution. Based on your representations, we conclude that section 552.108(a)(1) is applicable to the remaining information in Exhibit C. *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).

As you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state will be released, the city may withhold the remaining information in Exhibit C under section 552.108(a)(1).¹

Next, you claim that the information you have marked in Exhibit B is excepted under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. The common-law informer’s privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). This privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer’s identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). It protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law

¹As our ruling is dispositive, we need not address your remaining arguments against the disclosure of portions of Exhibit C.

enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981) (*citing* WIGMORE, EVIDENCE, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. The privilege excepts an informer’s statement only to the extent necessary to protect the informer’s identity. *See* Open Records Decision No. 549 at 5 (1990).

You state that Exhibit B contains the identifying information of an individual who reported a possible violation of section 49.02 of the Penal Code to the city’s police department. Based on your representations and our review of the submitted report, we conclude that the city has demonstrated the applicability of the common-law informer’s privilege to the identifying information you have marked. We note that some of the information you have marked does not constitute identifying information. Therefore, the city may not withhold this information, which we have marked for release, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, the city may withhold the remaining information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

Section 552.130 of the Government Code 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. Gov’t Code § 552.130(a)(1). Upon review, we find the city must withhold the Texas driver’s license number you have marked in Exhibit B under section 552.130 of the Government Code.

In summary, the city must release the information we have marked in Exhibit C pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which you state will be released, the city may withhold the remaining information in Exhibit C under section 552.108(a)(1) of the Government Code. With the exception of the information we have marked for release, the city may withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The city must withhold the Texas driver’s license number you have marked in Exhibit B under section 552.130 of the Government Code. The remaining information in Exhibit B must be released to the requestor.²

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.

²We note that the remaining information in Exhibit B includes the arrestee’s social security number, which constitutes basic information and which you state the city will redact pursuant to section 552.147 of the Government Code. 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. *See* Gov’t Code § 552.147.

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 356806

Enc. Submitted documents

c: Requestor
(w/o enclosures)