ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2012

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

OR2012-02689

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# 446003 (Cedar Park Ref. No. 12-136).

The Cedar Park Police Department (the "department") received a request for all audio transmissions made for thirty minutes before and two hours after the arrest of the requestor's client. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.130 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; [or]
> >
> > . . .
>
> (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 the requirements of Section 552.021 if:

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

Gov't Code § 552.108(a)(1), (b)(1). You state the information that relates to the requestor's client is excepted from disclosure "as it relates to an internal investigative record" and is pending prosecution in the Williamson County Court of Law #2. However, you inform us that only thirty-seven of the ninety-six submitted recordings "relate or partially relate to the requestor's client." You have not identified which of the submitted recordings pertains to the pending criminal prosecution. *See id.* § 552.301(e)(2). Upon review, we find recordings 23-24-12 and 23-34-37 relate to the requestor's client and, thus, to the pending criminal prosecution. Accordingly, recordings 23-24-12 and 23-34-37 may be withheld under section 552.108(a)(1) of the Government Code. However, we find the department has failed to demonstrate how the release of the remaining information would interfere with the detection, investigation or prosecution of a crime. Therefore, we conclude you have not established the remaining information is excepted from disclosure under sections 552.108(a)(1) or (b)(1) of the Government Code. Accordingly, the department may not withhold any portion of the remaining information under sections 552.108(a)(1) or 552.108(b)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release.[1] Gov't Code § 552.130. Upon review, we have indicated motor vehicle record information in the remaining audio recordings that are generally subject to section 552.130. However, section 552.130 protects privacy interests. Therefore, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code. Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds information is considered confidential under privacy principles). Accordingly, to the extent it does not belong to the requestor's client, the department must withhold the motor vehicle information we have indicated in the remaining audio recordings under section 552.130 of the Government Code.

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[1]Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body 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. 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). Gov't Code § 552.130(d), (e). Thus, the statutory amendments to section 552.130 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

We note portions of the remaining information may be subject to section 552.1175 of the Government Code.[2] Section 552.1175 provides in relevant part:

> (a) This section applies only to:
>
> > (1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]
> >
> > . . .
>
> (b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:
>
> > (1) chooses to restrict public access to the information; and
> >
> > (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code §§ 552.1175(a)(1), 552.1175(b)). Section 552.1175 also encompasses a peace officer's personal cellular telephone number if the officer pays for the cellular telephone service with his or her own personal funds. The recordings we have indicated contain the cellular telephone number of a peace officer. Upon review, we find that to the extent the officer concerned paid for the cellular telephone number we have indicated in the submitted audio recordings with his personal funds and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we have indicated under section 552.1175 of the Government Code. However, the department may not withhold the cellular telephone number we have indicated under section 552.1175 if the officer concerned did not pay for the cellular telephone service with his own personal funds or makes no election under section 552.1175(b).

You claim the department lacks the technical capacity to redact the information at issue from the submitted audio recordings. However, because the department had the ability to copy the submitted audio recordings in order to submit the requested information for our review, we believe the department has the capacity to produce a copy of only the non-confidential portions of the submitted audio recordings.

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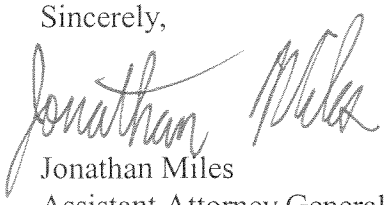
[2]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the department may withhold recordings 23-24-12 and 23-34-37 under section 552.108(a)(1) of the Government Code. To the extent the motor vehicle information we have indicated in the remaining audio recordings does not belong to the requestor's client, the department must withhold the motor vehicle information we indicated under section 552.130 of the Government Code.[3] To the extent the officer concerned paid for the cellular telephone number we have indicated in the submitted audio recordings with his personal funds and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we have indicated under section 552.1175 of the Government Code. The remaining information must be released.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 446003

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[3]In this instance, we note the requestor has a special right of access under section 552.023 of the Government Code to some of the information being released. Accordingly, if the department should receive another request for this information from someone without such a right of access, the department should again request an opinion from this office.