



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 21, 2014

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

OR2014-21265

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# 543843 (Cedar Park Ref. No. 14-1022).

The City of Cedar Park (the "city") received a request for several categories of information pertaining to a specified incident, including all audio, video, statements, 9-1-1 calls, and evidence. You state you do not have information responsive to portions of the request.<sup>1</sup> You further state you will release some information with redactions pursuant to sections 552.130(c) and 552.147(b) of the Government Code and under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).<sup>2</sup> You

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) 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. *See id.* § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we understand the requestor to argue the city has an obligation to disclose some of the submitted information to him pursuant to article 38.22 of the Code of Criminal Procedure and *Brady v. Maryland*, 373 U.S. 83 (1963), and, thus, the city may not withhold this information under the Act. In *Brady*, the United States Supreme Court held the prosecution is required to provide the defense with all potentially exculpatory evidence. 373 U.S. at 87. Article 38.22 contains provisions for the admissibility of statements of the accused in criminal proceedings and requires, as a precursor to admissibility of certain statements, that the defendant's attorney be provided with recordings of those statements. *See* Crim. Proc. Code art. 38.22, § 3(a)(5). However, we note *Brady* and article 38.22 address prosecutorial requirements and do not affect the requirements outlined in the Act. Here, the city is not the prosecution in the case at issue. Furthermore, the requestor submitted his request for information to the city pursuant to the Act. Accordingly, we will address the applicability of the Act to the submitted information.

Next, you note portions of the submitted information were the subject of previous requests for information, as a result of which this office issued Open Records Letter No. 2014-08950 (2014) and Open Records Letter No. 2014-12673 (2014). In Open Records Letter Ruling No. 2014-08950, we determined the city may withhold the submitted information under section 552.108(a)(2) of the Government Code. In Open Records Letter Ruling No. 2014-12673, we determined the city may withhold the submitted responsive information under section 552.108(a)(2) of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter Nos. 2014-08950 and 2014-12673 were based have changed. Accordingly, the city may continue to rely on Open Records Letter Nos. 2014-08950 and 2014-12673 as previous determinations and withhold the previously ruled upon information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address the submitted arguments for the submitted information not encompassed by the previous rulings.

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 of the Government Code encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *Id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI

it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find the Federal Bureau of Investigation (“FBI”) number you marked constitutes CHRI that is confidential under section 411.083. Thus, the city must withhold the FBI number you marked in Exhibit B under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.108(a)(2) 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 . . . 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[.]” *Gov’t Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information pertains to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) of the Government Code is applicable to Exhibit C.

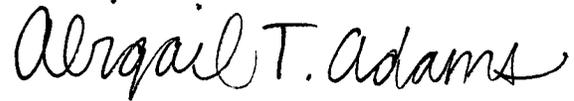
In summary, the city may rely on Open Records Letter Nos. 2014-08950 and 2014-12673 as previous determinations and withhold the identical information in accordance with those rulings. The city must withhold the FBI number you marked in Exhibit B under section 552.101 in conjunction with section 411.083 of the Government Code. The city may withhold Exhibit C under section 552.108(a)(2) of the Government Code. The city must release the remaining submitted information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Abigail T. Adams". The signature is written in a cursive, flowing style.

Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/ac

Ref: ID# 543843

Enc. Submitted documents

c: Requestor  
(w/o enclosures)