



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2009

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2009-02946

Dear Mr. Scott:

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# 337278.

The City of Conroe (the "city") received a request for all police reports related to two specified addresses for a particular period of time. You state you have released some of the requested information.¹ You claim that the remaining 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.

Initially, we note that report number 07033747 involves alleged violations of section 32.51 of the Penal Code, which provides that "[a] person commits an offense if the person obtains, possesses, transfers, or uses identifying information of another person without the other person's consent and with intent to harm or defraud another." Penal Code § 32.51(b). For purposes of section 32.51, "identifying information" includes an individual's name, social security number and government issued identification number. *Id.* § 32.51(a)(1)(A), (C).

¹Section 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. However, the requestor has a right of access to her own social security number. *See generally id.* § 552.023(b).

Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005 and provides as follows:

(a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

- (1) the name of the victim;
- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and
- (4) the results of any investigation.

(b) On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For purposes of article 2.29, an offense is committed on or after September 1, 2005, if no "element of the offense occurs before that date." Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, report number 07033747 pertains to alleged forgery, which constitutes a violation of section 32.51. The requestor here is the victim listed in the report and the alleged offense occurred after September 1, 2005. Accordingly, the information at issue is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor except to the extent it contains confidential information. You seek to withhold the report under section 552.108 of the Government Code. As a general rule, however, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the department may not withhold report number 07033747 under section 552.108. However, the report at issue contains information subject to sections 552.101 and 552.130 of the Government Code. These sections make information confidential for purposes of article 2.29. Therefore, we will address these sections for this information.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by statute. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.*

§ 411.083. 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 id.* 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. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. A portion of the information in report number 07033747 constitutes CHRI generated by TCIC and NCIC. We have marked the information the department must withhold pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.130 of the Government Code 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] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. We note, however, that section 552.130 protects privacy interests. Thus, the requestor has a right of access to her own Texas driver’s license information and the department may not withhold this information in this instance.² *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). The department must, however, withhold the Texas motor vehicle record information that does not belong to the requestor, which we have marked, pursuant to section 552.130 of the Government Code. The remaining information in report number 07033747 must be released to the requestor.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than 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 has concluded in a final result other than a conviction or deferred adjudication. You assert that the remaining submitted information pertains to concluded criminal cases, none of which resulted in a conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

However, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975),

²Section 552.023(a) provides that “[a] 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.” Gov’t Code § 552.023(a).

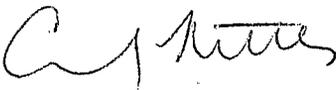
writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). See 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of basic front page offense and arrest information, which you state has been released, the department may withhold the remaining submitted information based on section 552.108(a)(2) of the Government Code.³

In summary, we have marked the information in report number 07033747 the department must withhold pursuant to section 552.101 in conjunction with chapter 411 of the Government Code. The department must withhold the Texas motor vehicle record information in report number 07033747 that does not belong to the requestor, which we have marked, pursuant to section 552.130 of the Government Code. The remaining information in report number 07033747 must be released to the requestor.⁴ With the exception of basic front page offense and arrest information, which you state has been released, the department may withhold the remaining submitted information based on section 552.108(a)(2) of the Government Code.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jb

³As our ruling is dispositive, we do not address your remaining arguments.

⁴We note that the requestor has a right of access to information in the submitted documents that would otherwise be excepted from release under the Act. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). Thus, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

Ref: ID# 337278

Enc. Submitted documents

c: Requestor
(w/o enclosures)