



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2009

Ms. Kelley Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2009-11795

Dear Ms. Messer:

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# 353136.

The Abilene Police Department (the "department") received a request for police report numbers 08-1876 and 08-1936. You state that you have released basic information to the requestor.¹ You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that police report number 08-1936 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 and financial institution account number. *Id.* § 32.51(a)(1)(A), (C). Article 2.29 of the Code of

¹We assume that the basic information you have released is the basic information referred to under section 552.108(c) of the Government Code. Gov't Code § 552.108(c) (requiring the release of basic information about an arrested person, and arrest, or a crime); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

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. In this instance, police report number 08-1936 involves alleged forgeries, which constitutes a violation of section 32.51 of the Penal Code. The requestor in this instance is the victim listed in the report and the alleged offenses occurred after September 1, 2005. Accordingly, police report number 08-1936 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, section 552.108 is not applicable to police report number 08-1936 and it may not be withheld on that basis. Instead, the information must be released to this requestor in its entirety pursuant to article 2.29 of the Code of Criminal Procedure. We will now address your claim under section 552.108 with respect to the remaining information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested);

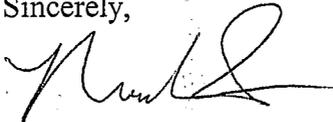
see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). You state that police report number 08-1876 pertains to an investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree that section 552.108(a)(2) is applicable to the submitted information. Thus, with the exception of the basic information, which you state you have already released, the department may withhold police report number 08-1876 under section 552.108(a)(2) of the Government Code.

In summary, the department must release police report number 08-1936 in its entirety pursuant to article 2.29 of the Code of Criminal Procedure. With the exception of basic information, which you state has already been released, the department may withhold police report number 08-1876 under 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/eeg

Ref: ID# 353136

Enc. Submitted documents

cc: Requestor
(w/o enclosures)