



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2009

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

OR2009-14925

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# 358988.

The Conroe Police Department (the "department") received a request for a specified incident report. You state the department has released certain information. You claim the submitted 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(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than 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.* §§ 552.108(a)(2), .302(e)(1)(A). You inform us that the submitted police report pertains to a case that concluded in a result other than conviction or deferred adjudication. Based on your representation and our review, we agree that section 552.108(a)(2) is generally applicable to the submitted report.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). Basic information refers

to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of basic information, which you state has been released, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

However, we note the requestor is a recruiter for the United States Army (the "Army") who indicates that he is conducting a background investigation of the individual in question for purposes of determining his eligibility for enlistment. The United States Department of Defense (the "DoD") is authorized to perform background investigations of persons seeking to enlist to determine the eligibility of applicants for acceptance into armed services. 5 U.S.C. § 9101(b)(1)(C); *see also id.* § 9101(a)(6)(A) (DoD is a covered agency for purposes of section 9101). The Army has a right to the criminal history record information ("CHRI") of state and local criminal justice agencies when its investigation is conducted with the consent of the individual being investigated. *See id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(6) (DoD includes the Department of the Army). CHRI is defined as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release" but does not include "identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system" or "records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality." 5 U.S.C. § 9101(a)(2). Federal law provides that the Army's right of access to CHRI preempts state confidentiality provisions. *Id.* § 9101(b)(4) (section 9101 "shall apply notwithstanding any other provision of law . . . of any State"). However, federal law also provides that the Army's right of access is contingent on receiving written consent from the individual under investigation for the release of such CHRI. *See id.* § 9101(c). Therefore, if the Army receives written consent of release from the individual at issue, the department must release CHRI to this requestor and may withhold the remaining information under section 552.108(a)(2) of the Government Code.¹ Otherwise, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.² As our ruling is dispositive, we need not address your remaining argument against disclosure.

¹We note the requestor has a right of access to information in the submitted documents that otherwise would be exempted from public disclosure under the Act. Thus, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

²We note that the basic information in this instance includes the arrestee's social security number. 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.

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 358988

Enc. Submitted documents

c: Requestor
(w/o enclosures)