



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 10, 2009

Mr. Randy A. Stoneroad
Deputy City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2009-17500

Dear Mr. Stoneroad:

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# 363859.

The City of Temple and the Temple Police Department (collectively the "city") received the following two requests: (1) incident report numbers 09008424, 09008537, and 0908538, as well as any offense reports from September 2005 involving a named individual; and (2) incident report numbers 06000550, 0600551, and 06010284, and any and all records concerning a second named individual during a specified time period. You state the city has released certain information. You claim the submitted incident reports are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the second requestor. *See* Gov't Code § 552.304(a) (providing that a person may submit comments stating why information should or should not be released).

Initially, we address the second requestor's contention that the city has failed to submit detailed written comments supporting the exception it claims as required by section 552.301 of the Government Code. Under section 552.301(e)(1)(A), a governmental body is required to submit to this office within fifteen business days of receiving an open records request written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld. *See id.* § 552.301(e)(1). Upon review, we conclude that the city has submitted written comments in support of the exception it claims that are sufficient for the purposes of section 552.301(e)(1)(A). Thus, we conclude that the city has complied with section 552.301(e)(1)(A) of the Government Code.

Next, we note that incident report 09008357 involves an alleged violation 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). 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 the 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 June 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885. Report number 09008357 reflects that the offense was committed on or after September 1, 2005. Thus, this report may be subject to article 2.29 of the Code of Criminal Procedure. Although you seek to withhold this information under section 552.108 of the Government Code, the exceptions to disclosure found in the Act are generally not applicable to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, to the extent the requestors are seeking access to report 09008357 on behalf of the crime victim, that report must be released to the requestors pursuant to article 2.29, except for any confidential information. In the event that neither requestor has a right of access to report 09008357 under article 2.29, we will address your claim under section 552.108 for that information. We also will address your claims under section 552.108 for the remaining information at issue.

We note that report 09008357 contains a Texas license plate number, which we have marked that is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of

this state.¹ See Gov't Code § 552.130(a)(2). This exception protects personal privacy. Thus, to the extent the requestors are the authorized representatives of the owner of the vehicle concerned, the requestors have a right of access to the license plate number. *See id.* § 552.023(a), (b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). If neither of the requestors represents the individual, then the license plate number must be withheld under section 552.130.

Section 552.108(a)(1) 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] release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that incident reports 09008424, 09008357, and 09008358 relate to pending criminal investigations. Based on your representation and our review of the information at issue, we conclude that the city has demonstrated that release of these reports would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the city may generally withhold reports 09008424, 09008357, and 09008358 under section 552.108(a)(1) of the Government Code.

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 concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .302(e)(1)(A). You state that incident reports 09008857 and 05009908 pertain to investigations that did not result in conviction or deferred adjudication. Based on your representation and our review of the information at issue, we conclude that the city has demonstrated that section 552.108(a)(2) is applicable to these reports. Therefore, we conclude that the city may generally withhold reports 09008857 and 05009908 under section 552.108(a)(2) of the Government Code.

However, as you acknowledge, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c).

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See *id.* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which you state has been released, the city may withhold the submitted incident reports under section 552.108(a)(1) and 552.108(a)(2) of the Government Code.

In summary, to the extent that the requestors are seeking access to the information relating to report 09008357 on behalf of the crime victim, this information is subject to article 2.29 and must be released. However, in that instance, the city must withhold the information we have marked under section 552.130 of the Government Code unless the requestors have a right of access to this information. If article 2.29 is not applicable, the city, with the exception of basic information, may withhold incident report 09008357 as well as incident reports 09008424 and 09008358 under section 552.108(a)(1) of the Government Code. With the exception of basic information, the city may withhold incident reports 09008857 and 05009908 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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/rl

Ref: ID# 363859

Enc. Submitted documents

c: Requestor
(w/o enclosures)