



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 2012

Mr. Tom Donnelly  
City Administrator  
City of Hallettsville  
101 North Main  
Hallettsville, Texas 77964-2727

OR2012-11250

Dear Mr. Donnelly:

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# 459741.

The City of Hallettsville (the "city") received a request for information related to four specified incidents. You state some responsive information will be released to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note report number CS-11-002504/#IR-11-000309 and the related arrest report number 11-000139 involve an alleged violation of section 32.51 of the Penal Code, which provides that "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of . . . identifying information of another person without the other person's consent[.]" Penal Code § 32.51(b)(1). 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 Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005 and provides:

- (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 CS-11-002504/#IR-11-000309 and the related arrest report number 11-000139 pertain to check forgery which constitutes an alleged violation of section 32.51. We note the requestor is the victim of the alleged identity theft listed in the report, and the alleged offense occurred after September 1, 2005. Therefore, report number CS-11-002504/#IR-11-000309 and arrest report number 11-000139 are subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor, except to the extent these records contain confidential information. You claim report number CS-11- 002504/#IR-11-000309 is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> However, section 552.108 is a discretionary exception that does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, report number CS-11-002504/#IR-11-000309 may not be withheld under section 552.108 of the Government Code.

You indicate that you will redact portions of the submitted information under section 552.147 of the Government Code. Section 552.147(b) generally permits a governmental body to redact a living person's social security number without seeking a decision from this office. *See* Gov't Code § 552.147(b). In this case, article 2.29(b) provides this requestor with a right of access to all information in report number CS-11-002504/#IR-11-000309 and arrest report 11-000139 that is not confidential. Section 552.147 does not make information confidential by law. *See id.* § 552.147(a) (section 552.147 does not make the social security number of a living person confidential).

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<sup>1</sup>We note the city does not raise section 552.108 as an exception to disclosure of arrest report number 11-000139.

Therefore, the city may not rely on section 552.147(b) of the Government Code to withhold the social security number in report number CS-11-002504/#IR-11-000309 or arrest report number 11-000139.

Because section 552.130 of the Government Code is a confidentiality provision, we will address the applicability of this provision to report number CS-11-002504/#IR-11-000309, arrest report number 11-000139, and the remaining submitted information. We also will address your arguments under section 552.108 of the Government Code for the remaining submitted information.

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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state report number CS-12-001284/#IR-12-000202 relates to a pending criminal case. Based on your representation and our review, we find release of report number CS-12-001284/#IR-12-000202 would interfere with the detection, investigation, or prosecution of crime, and we agree section 552.108(a)(1) is applicable to this information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976).

You assert report numbers CS-11-002748/#IR-11-000340 and CS-12-000934/#IR-12-000147 are excepted from disclosure under section 552.108(a)(2) of the Government Code. 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). You state the information at issue pertains to concluded investigations that did not result in conviction or deferred adjudication. Based on your representations and our review, we find section 552.108(a)(2) is applicable to report numbers CS-11-002748/#IR-11-000340 and CS-12-000934/#IR-12-000147.

We note, however, 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which you indicate has already been released, the city may withhold report number CS-12-001284/#IR-12-000202 under section 552.108(a)(1) of the Government Code and report numbers CS-11-002748/#IR-11-000340 and CS-12-000934/#IR-12-000147 under section 552.108(a)(2) of the Government Code.

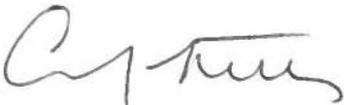
Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we determine the city must withhold the driver's license numbers you have marked, and the additional information we have marked, in report numbers CS-11-002504/#IR-11-000309 and arrest report number 11-000139.

In summary, with the exception of basic information, the city may withhold report number CS-12-001284/#IR-12-000202 under section 552.108(a)(1) of the Government Code and report numbers CS-11-002748/#IR-11-000340 and CS-12-000934/#IR-12-000147 under section 552.108(a)(2) of the Government Code. The city must withhold the driver's license numbers you have marked, and the additional information we have marked, in report number CS-11-002504/#IR-11-000309 and arrest report number 11-000139. The remaining information must be released.

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/tch

Ref: ID# 459741

Enc. Submitted documents

c: Requestor  
(w/o enclosures)