



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 2, 2013

Mr. James McKechnie
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307-1431

OR2013-00027

Dear Mr. McKechnie:

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# 479355 (City ID# 589A).

The City of Wichita Falls (the "city") received a request for reports involving the requestor.¹ You claim 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 report number 10-120778 relates to an investigation of 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); *see id.* § 32.51(a)(1) (defining "identifying information"). 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:

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

(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 10-120778 involves a credit card fraud investigation, which constitutes a violation of section 32.51 of the Penal Code. We note the requestor is listed as the victim of the crime and the report is related to an offense that occurred after September 1, 2005. Therefore, the report is subject to article 2.29 of the Code of Criminal Procedure and must be released to this requestor, except to the extent it contains confidential information. Although you seek to withhold the report under section 552.108 of the Government Code, the general exceptions to disclosure found in the Act do not apply to information other statutes make public. See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, section 552.108 is not applicable to report number 10-120778. Consequently, the city must release report number 10-120778 to this requestor pursuant to article 2.29 of the Code of Criminal Procedure.

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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. 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 report numbers 12-100800, 12-011799, 12-010083, 11-121123, and 11-100994 relate to ongoing criminal investigations. Based on your representation and our review of the information, we conclude 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. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code applies to report numbers 12-100800, 12-011799, 12-010083, 11-121123, and 11-100994.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate 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). You state the remaining reports at issue did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) applies to the remaining reports at issue.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. Basic information must be released, even if it does not literally appear on the front page of the report. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the city may withhold report numbers 12-100800, 12-011799, 12-010083, 11-121123, and 11-100994 under section 552.108(a)(1) and the remaining reports at issue under section 552.108(a)(2).

In summary, report number 10-120078 must be released to this requestor pursuant to article 2.29 of the Code of Criminal Procedure.² Except for basic information, the city may withhold report numbers 12-100800, 12-011799, 12-010083, 11-121123, and 11-100994 under section 552.108(a)(1) of the Government Code and the remaining reports at issue 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.

²We note the requestor has a right of access to this information; therefore, if the city receives another request for this information from an individual other than the requestor, the city must again seek a ruling from this office.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/bhf

Ref: ID# 479355

Enc. Submitted documents

c: Requestor
(w/o enclosures)