



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 27, 2008

Mr. Darrell G-M Noga  
Fee, Smith, Sharp & Vitullo, L.L.P.  
Three Galleria Tower  
13155 Noel Road, Suite 1000  
Dallas, Texas 75240

OR2008-07172

Dear Mr. Noga:

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# 311583.

The City of Coppell (the "city"), which you represent, received a request for a specified police report. You state that the city will release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted report 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, social security number and government issued identification 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 as follows:

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<sup>1</sup>Although you also raise section 552.117 of the Government Code, you have provided no argument explaining how this exception is applicable to the submitted information. Therefore, we presume you no longer assert this exception to disclosure. Gov't Code §§ 552.301, .302.

(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, the submitted report pertains to the unauthorized use of a credit card, which constitutes an alleged violation of section 32.51. The requestor here is the victim listed in the report and the alleged offense occurred after September 1, 2005. Accordingly, the submitted information 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, the city may not withhold the submitted information under section 552.108. However, the submitted report contains information subject to sections 552.101 and 552.130 of the Government Code. These sections make information confidential for purposes of article 2.29. Therefore, we will address these sections.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by statute. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.*

§ 411.083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090–.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. A portion of the submitted information constitutes CHRI generated by TCIC and NCIC. We have marked the information the city must withhold pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. We note, however, that section 552.130 protects privacy interests. Thus, the requestor has a right of access to her own Texas driver’s license information and the city may not withhold this information in this instance.<sup>2</sup> *See id.* § 552.023(a); Open Records Decision No. 481 at 4

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<sup>2</sup>Section 552.023(a) provides that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a).

(1987) (privacy theories not implicated when individual requests information concerning himself). The city must, however, withhold the Texas motor vehicle record information that does not belong to the requestor, which we have marked, pursuant to section 552.130 of the Government Code.

Finally, you raise section 552.147 of the Government Code. 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 under the Act. Therefore, the city may withhold the social security number pursuant to section 552.147 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with chapter 411 of the Government Code and common-law privacy. The Texas motor vehicle record information we have marked must be withheld under section 552.130. The city may withhold the social security number pursuant to section 552.147. The remaining information must be released.<sup>3</sup>

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

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<sup>3</sup>We note that some of the information being released is confidential under sections 552.130 and 552.136, respectively, and not subject to release to the general public. However, the requestor has a right of access to her own information. *See* Gov't Code § 552.023. Therefore, if the city receives another request for this information from an individual other than this requestor, the city should again seek our decision.

requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jordan Hale  
Assistant Attorney General  
Open Records Division

JH/jb

Ref: ID# 311583

Enc. Submitted documents

c: Ms. Jennifer Cooper  
3809 Verde Drive  
Keller, Texas 76248  
(w/o enclosures)