



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 19, 2009

Ms. Julie Pandya  
Assistant City Attorney  
City of Cedar Park  
600 North Bell Boulevard  
Cedar Park, Texas 78613

OR2009-11667

Dear Ms. Pandya:

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# 352639 (No. 09-175).

The City of Cedar Park (the "city") received a request for information relating to a specified case number. You inform us that the city has made some of the submitted information available to the requestor. You claim that the rest of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note that the information at issue is related to 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 Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

The information at issue involves an alleged violation of section 32.51 of the Penal Code, and the requestor is listed as the crime victim. Therefore, the information may be subject to article 2.29 of the Code of Criminal Procedure. If the information at issue is subject to article 2.29, then it must be released to this requestor, except to the extent that the information is confidential. Although you seek to withhold the information at issue 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, the information may not be withheld under section 552.108 if it is subject to article 2.29. You also claim, however, that sections 552.101 and 552.130 of the Government Code are applicable to some of the information. Those sections are confidentiality provisions for purposes of article 2.29.

Although article 2.29 may be applicable in this instance, we are unable to determine whether any element of the offense occurred prior to September 1, 2005. Therefore, we must address your claims in the alternative. Thus, if any element of the offense occurred prior to September 1, 2005, then article 2.29 is not applicable to the information at issue, and we will determine whether the information may be withheld under section 552.108. But if no element of the offense occurred prior to September 1, 2005, then article 2.29 is applicable in this instance. If article 2.29 is applicable, then the information at issue may not be withheld under section 552.108, but we will determine whether any of the information must be withheld under sections 552.101 and 552.130.

Section 552.108 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 and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and have provided a memorandum from the police department reflecting, that the information at issue is related to a pending criminal investigation. Based on your representation and the submitted memorandum, we conclude that section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ’g 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) (court delineates law enforcement interests that are present in active cases). Therefore, if article 2.29 of the Code of Criminal Procedure is not applicable, then the city may withhold the information at issue under section 552.108(a)(1).

In the event that article 2.29 is applicable in this instance, we address the confidentiality provisions you claim. Section 552.101 of the Government Code excepts from 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 other statutes make confidential. You contend that the information at issue includes confidential criminal history record information (“CHRI”). CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). We note that the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *Id.* Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). We find that the information that you seek to withhold under section 552.101 is not confidential under federal law or subchapter F of chapter 411 of the Government Code. Therefore, the city may not withhold any of the information at issue under section 552.101 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state. *See*

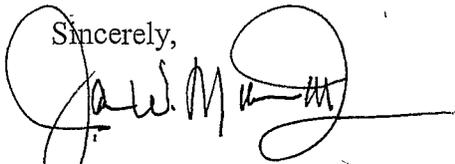
Gov't Code § 552.130(a)(1). We have marked information that must be withheld under section 552.130.

In summary, if any element of the offense occurred prior to September 1, 2005, then article 2.29 of the Code of Criminal Procedure is not applicable in this instance, and the city may withhold the information at issue under section 552.108(a)(1) of the Government Code. But if no element of the offense occurred prior to September 1, 2005, then article 2.29 is applicable, and the information at issue must be released to this requestor, except for the marked information that must be withheld under section 552.130 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](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 at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 352639

Enc: Submitted documents

c: Requestor  
(w/o enclosures)