



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road Suite 800
Richardson, Texas 75081

OR2009-14415

Dear Mr. Griffith

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# 363722 (No. 526).

The Town of Flower Mound (the "town"), which you represent, received a request for information relating to two specified case numbers. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We first note that the information relating to case number 06-6183 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 Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

The information relating to case number 06-6183 involves an alleged violation of section 32.51 of the Penal Code, and the information reflects that the offense was committed on or after September 1, 2005. Thus, that information may be subject to article 2.29 of the Code of Criminal Procedure. In this instance, however, we are unable to determine whether the requestor is seeking access to the information in question on behalf of the crime victim. Therefore, we must rule under article 2.29 in the alternative. Thus, if the requestor is seeking access to the information relating to case number 06-6183 on behalf of the crime victim, then the information in question is subject to article 2.29 and must be released to the requestor, except to the extent the information is confidential. Although you seek to withhold the information in question 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, if the requestor is seeking access to the information relating to case number 06-6183 on behalf of the crime victim, then the information in question may not be withheld under section 552.108 and must be released to the requestor in its entirety pursuant to article 2.29. But if the requestor is not seeking access to the information on behalf of the crime victim, then the information relating to case number 06-6183 is not subject to release under article 2.29.

In the event that article 2.29 is not applicable to the information relating to case number 06-6183, we address your claim under section 552.108 for that information, as well as for the information relating to case number 06-026715. Section 552.108(a)(2) 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception 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 that both cases concluded in a result other than a conviction or a deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is generally applicable in this instance.

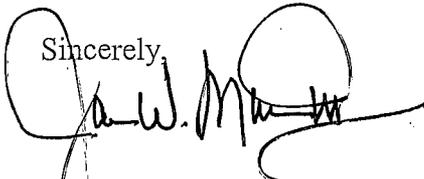
We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See 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*). The town must release basic information, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of an offense or arrest report. The town may withhold the rest of the submitted information under section 552.108(a)(2).

In summary, if the requestor is seeking access to the information relating to case number 06-6183 on behalf of the crime victim, then the town must release that information pursuant to article 2.29 of the Code of Criminal Procedure, but may withhold the information relating to case number 06-026715 under section 552.108(a)(2) of the Government Code, except for the basic information that must be released under section 552.108(c).¹ If the requestor is not seeking access to the information relating to case number 06-6183 on behalf of the crime victim, then the town may withhold all of the submitted information under section 552.108(a)(2), except for basic information.

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,



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

JWM/cc

¹We note that the information relating to case number 06-6183 includes information pertaining to the crime victim that the town would ordinarily be required to withhold to protect her privacy. The requestor also has a right to that information, however, if he is seeking access to the information relating to case number 06-6183 on the victim's behalf. See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

Ref: ID# 363722

Enc: Submitted documents

c: Requestor
(w/o enclosures)