



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

October 4, 2012

Mr. John Ohnemiller  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702

OR2012-15798

Dear Mr. Ohnemiller:

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# 468042 (No. 08-12).

The Midland Police Department (the "department") received a request for a specified police report. You claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We note the submitted report is related 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:

(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 involves identity theft, 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 disclosure under article 2.29 of the Code of Criminal Procedure and must be released to this requestor, except to the extent it contains confidential information. You claim section 552.101 of the Government Code, which is a confidentiality provision for purposes of article 2.29. We note the submitted report also contains information protected by section 552.130 of the Government Code, which also is a confidentiality provision for purposes of article 2.29.<sup>1</sup> Accordingly, we will address sections 552.101 and 552.130.

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 other statutes make confidential. Criminal history record information ("CHRI") obtained from the National Crime Information

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<sup>1</sup>This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Center (the "NCIC") or the Texas Crime Information Center is confidential under section 552.101 of the Government Code in conjunction with federal and state law. 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 the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety (the "DPS") under subchapter C of chapter 521 of the Transportation Code. *See id.* § 411.082(2). We also note a criminal justice agency may disclose to the public CHRI "that is related to the offense for which a person is involved in the criminal justice system." *Id.* § 411.081(b). Federal law governs the dissemination of CHRI obtained from the NCIC 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 it generates. *See* ORD 565 at 10-12; *see generally* Gov't Code ch. 411 subch. F. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, but 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 have marked CHRI the department must withhold under section 552.101 of the Government Code in conjunction with the federal law and subchapter F of chapter 411 of the Government Code. Although you appear to contend the submitted report contains other such information, we find none of the remaining information at issue consists of CHRI. We therefore conclude the department may not withhold any of the remaining information under section 552.101.

Section 552.130 of the Government Code excepts from disclosure information related to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or county; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

*Id.* § 552.130. We have marked driver's license, motor vehicle and personal identification information the department must withhold under section 552.130 of the Government Code.

We note some of the remaining information appears to be protected by copyright law. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See* Open Records Decision No. 180 at 3 (1977); *see also* Open Records Decision No. 109 (1975). A custodian of public records also must comply with copyright law, however, and is not required to furnish copies of records that are copyrighted. *See* ORD 180 at 3. A member of the public who wishes to make copies of copyrighted materials must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the department must withhold (1) the marked CHRI under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code and (2) the marked driver's license, motor vehicle and personal identification information under section 552.130 of the Government Code. The department must release the rest of the submitted information pursuant to article 2.29 of the Code of Criminal Procedure, but any copyrighted information must be released in accordance with copyright law.<sup>2</sup>

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.

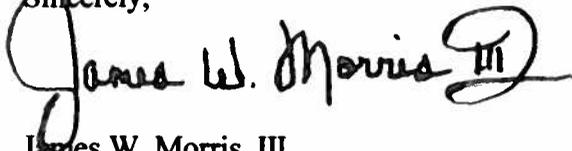
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>2</sup>We note the submitted report also contains information related to the requestor the department would be required to withhold from the general public under sections 552.130 and 552.136 of the Government Code. But because those exceptions protect personal privacy, the requestor has a right of access to the information in question under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We also note section 552.130(c) of the Government Code authorizes a governmental body to redact the driver's license and personal identification information described in subsections 552.130(a)(1) and (a)(3) without the necessity of requesting a decision from this office. *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide notice to requestor). Section 552.136(c) of the Government Code authorizes a governmental body to redact access device numbers subject to section 552.136(b) without requesting a decision. *See id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general, and governmental body withholding information pursuant to section 552.136(c) must provide notice to requestor). Thus, should the department receive another request for this same report from a different requestor, sections 552.130(c) and 552.136(c) authorize the department to withhold information encompassed by sections 552.130 and 552.136 without the necessity of requesting another decision.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

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

JWM/bhf

Ref: ID# 468042

Enc: Submitted documents

c: Requestor  
(w/o enclosures)