ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2006

Mr. Asem Eltiar
Assistant City Attorney
Arlington Police Department
Legal Division - MS 04-0200
P. O. Box 1065
Arlington, Texas 76004-1065

OR2006-08621

Dear Mr. Eltiar:

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# 256015.

The Arlington Police Department (the "department") received a request for two specified incident reports and a corresponding 9-1-1 call recording. 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 submitted information.

Initially, we note that one of the requested incident reports, number 060035241, 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). Under section 32.51(a), identifying information is defined to include "information that alone or in conjunction with other information identifies an individual, including an individual's . . . unique electronic identification number, address, and routing code, [and] financial institution account number[.]" *Id.* § 32.51(a)(1)(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:

> (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:
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> (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. In this instance, report number 060035241 pertains to the theft of identifying information, which constitutes an alleged violation of section 32.51. The requestor here is the victim listed in the report. 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." *Id.* The submitted report reflects that the theft occurred after September 1, 2005. Thus, report number 060035241 is subject to article 2.29. You seek to withhold this report under section 552.108 of the Government Code. As a general rule, 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, section 552.108 is not applicable to the submitted report and the department may not withhold it on that ground. As report number 060035241 does not contain any information that is confidential by law, the department must release the report in its entirety pursuant to article 2.29.

You also assert that the remaining incident report, number 060034878, and the corresponding 9-1-1 call recording may be excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." *See* Gov't Code §552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report number 060034878 and the corresponding 9-1-1 call recording relate to a pending criminal investigation. Based upon this representation, we conclude that the release

of report number 060034878 and the corresponding 9-1-1 call recording 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), *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).

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic information, the department may withhold the report number 060034878 and the corresponding 9-1-1 call recording from disclosure based on section 552.108(a)(1). We note that the department has the discretion to release information that is not otherwise made confidential by law. Gov't Code § 552.007.

In summary, the department must release report number 060035241 pursuant to article 2.29 of the Code of Criminal Procedure. With the exception of basic information, the department may withhold report number 060034878 and the corresponding 9-1-1 call recording pursuant to section 552.108(a)(1) of the Government Code.

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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 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 appeal 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,

Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 256015

Enc. Submitted documents

c: Ms. Johanna Marshall
P. O. Box 201339
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(w/o enclosures)