



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2006

Mr. Galen Gatten
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2006-08877

Dear Mr. Gatten:

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# 256921.

The Midland Police Department (the "department") received a request for two specified incident reports. You state that basic information has been released from one of the reports but claim that the remainder of the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. *See* Open Records Decision No. 127 (1976) (summarizing basic information). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted records involve 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). 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 two submitted reports pertain to charges of counterfeiting/forgery and credit card fraud, respectively, which constitute violations of section 32.51. The requestor is the victim listed in both reports. The report labeled as Exhibit B shows that it pertains to an incident that occurred prior to September 1, 2005. Therefore, Exhibit B is not subject to article 2.29 and we will address your arguments under section 552.108 of the Government Code for that information. However, the report labeled as Exhibit C shows that it pertains to an incident that occurred after September 1, 2005. Thus, Exhibit C is subject to article 2.29 and must be released to the requestor, unless it contains confidential information. In this instance, Exhibit C contains the suspect's driver's license number and social security number. Section 552.130 of the Government Code 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[,] a motor vehicle title or registration issued by an agency of this state[, or] a personal identification document[.]" Gov't Code § 552.130. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Accordingly, the suspect's driver's license number is confidential under section 552.130, while the suspect's social security number is confidential under section 552.147. Therefore, Exhibit C must be released with the suspect's driver's license number and social security number redacted. *See* Crim. Proc. Code art. 2.29(b).

You claim that Exhibit B is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning a criminal investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final

result other than a conviction or deferred adjudication. You state that Exhibit B pertains to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Based on our review, we find that section 552.108(a)(2) is applicable in this instance. Therefore, with the exception of basic information, which you state has been released, the department may withhold Exhibit B pursuant to section 552.108(a)(2) of the Government Code.

In summary, with the exception of the suspect's driver's license number and social security number, which must be withheld, the department must release Exhibit C pursuant to article 2.29 of the Code of Criminal Procedure. With the exception of basic information, which you state has been released, the department may withhold Exhibit B under section 552.108 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/dh

Ref: ID# 256921

Enc. Submitted documents

c: Ms. Monica Beasley
1804 East Oak Avenue
Midland, Texas 79705
(w/o enclosures)