



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 3, 2007

Mr. Robert Green  
Administrative Support II  
City of Baytown  
3200 North Main Street  
Baytown, Texas 77521

OR2007-00046

Dear Mr. Green:

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# 268321.

The Baytown Police Department (the "department") received a request for a specified incident report. You claim that the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted report 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). For purposes of section 32.51, "identifying information" includes an individual's name, government issued identification number, and financial institution account number. *Id.* § 32.51(a)(1)(A), (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:

- (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.

The submitted report pertains to the fraudulent use of a person's identifying information, and the alleged offense occurred after September 1, 2005; accordingly, the report is subject to article 2.29. The requestor in this instance is identified in the submitted information as an individual holding power of attorney for the victim identified in the report. Therefore, if the requestor is acting as the victim's authorized representative, then he has a right of access to the incident report. *See* Crim. Proc. Code art. 2.29. We note that section 552.108 of the Government Code does not make information confidential for purposes of article 2.29. However, sections 552.130, 552.136, and 552.147 of the Government Code make information confidential for purposes of article 2.29.<sup>1</sup> Therefore, we will address these exceptions.

Section 552.130 of the Government Code provides that information relating to a driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note that the submitted Texas driver's license number subject to section 552.130 belongs to the victim for whom the requestor holds power of attorney. Thus, if the requestor is acting as the victim's authorized representative, he has a right of access to this Texas driver's license number. *See id.* § 552.023 (governmental body may not deny access to person whom information relates or the person's authorized representative on grounds that information is considered confidential by privacy principles). If the requestor is not acting as the victim's authorized representative, then this Texas driver's license number, which we have marked, must be withheld under section 552.130 of the Government Code. The remaining submitted driver's license number is identified as being forged and not actually issued and, thus, may not be withheld under section 552.130

Next, we note the submitted information includes bank account numbers of the victim. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. If the requestor is acting as the victim’s authorized representative, he has a right of access to these bank account numbers. *See id.* § 552.023. If the requestor is not acting as the victim’s authorized representative, then these bank account numbers, which we have marked, must be withheld under section 552.136.

Section 552.147 of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. The social security numbers we have marked must be withheld under section 552.147. We note none of these social security numbers belong to either victim or requestor.

Lastly, in the event the requestor is not acting as the victim’s authorized representative, we will consider your arguments under section 552.108 of the Government Code. Section 552.108(a)(1) 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 governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), 52.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation. Based on this representation, we conclude that the release of the information you have marked under section 552.108 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.] 975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold this information under section 552.108(a)(1) if the requestor is not acting as the victim’s authorized representative.

In summary, if the requestor is acting as the victim’s authorized representative, the department (1) must withhold the information we have marked pursuant to section 552.147 of the Government Code, and (2) must release the remaining submitted information in accordance with article 2.29 of the Code of Criminal Procedure. If the requestor is not acting as the victim’s authorized representative, the department: (1) may withhold the information it has marked under section 552.108 of the Government Code, (2) must withhold the information we have marked pursuant to sections 552.130, 552.136 and 552.147 of the Government Code, and (3) must release the remaining submitted information.

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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/eb

Ref: ID# 268321

Enc. Submitted documents

c: Mr. Leon Crawford  
4514 Park Grove Drive  
Baytown, Texas 77521  
(w/o enclosures)