



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 14, 2007

Mr. Steven M. Kean  
Deputy City Attorney  
City of Tyler - Legal Department  
P. O. Box 2039  
Tyler, Texas 75710

OR2007-02806

Dear Mr. Kean:

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# 273611.

The Tyler Police Department (the "department") received a request for a specified police report. You claim that the submitted information is excepted from disclosure under sections 552.101, 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 information 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:

- (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 information pertains to an alleged identity theft. The requestor is the victim of the alleged identity theft. Furthermore, the report relates to an offense that occurred after September 1, 2005. Thus, this report is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor, except to the extent that it contains confidential information. You seek to withhold portions of the 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). Thus, section 552.108 is not applicable to the submitted report. We note, however, that the submitted information contains information that is protected under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. As these exceptions are confidentiality provisions, we will address their applicability.

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 section encompasses information protected by other statutes. Section 1703.306 of the Occupations Code provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. Accordingly, we have marked the polygraph information that must be withheld under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code. § 552.130. Accordingly, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision 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."<sup>1</sup> *Id.* § 552.136. Thus, the department must withhold the bank account numbers we have marked under section 552.136 of the Government Code.

---

<sup>1</sup>This office 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).

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. The department must withhold the social security numbers we have marked pursuant to section 552.147 of the Government Code.<sup>2</sup>

In summary, the department must withhold (1) the information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code, (2) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code, (3) the information we have marked under section 552.136 of the Government Code, and (4) the social security numbers we have marked under section 552.147 of the Government Code. The remaining information must be released.<sup>3</sup>

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

---

<sup>2</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

<sup>3</sup>We note that some of the information being released contains information that would otherwise be confidential under sections 552.130 and 552.147 of the Government Code. However, because this information belongs to the requestor, it may not be withheld in this instance. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). However, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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,



Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/krl

Ref: ID# 273611

Enc. Submitted documents

c: Ms. Deborah Moose-Clark  
70 Quail Lane  
Whitehouse, Texas 75791-9616  
(w/o enclosures)