



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 20, 2007

Mr. Robert Dillard III  
Nichols, Jackson, Dillard, Hager & Smith  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2007-07819

Dear Mr. Dillard:

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# 281462.

The University Park Police Department (the "department") received a request for an offense report involving a forged check. 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 have reviewed the information you submitted.

We note that the submitted report is related to 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). 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 the 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 an alleged identity theft, and the requestor is listed as the victim. Furthermore, the report is related to an offense that occurred after September 1, 2005. Therefore, the report is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor, unless it contains confidential information. You seek to withhold the report under section 552.108 of the Government Code. Section 552.108 of the Government Code does not make information confidential for purposes of article 2.29. *See* Open Records Decision No. 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the submitted information on that ground. We note, however, that the submitted information contains information that is protected under sections 552.101, 552.130 and 552.136 of the Government Code.<sup>1</sup> 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. Section 552.101 encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems

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<sup>1</sup>Unlike other exceptions to disclosure, this office will raise 552.101, 552.130 and 552.136 on behalf of a governmental body, as they are mandatory exceptions to disclosure and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. We have marked the CHRI that must be withheld under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). The department must withhold the Texas driver’s license information we have marked under section 552.130.

Section 552.136(b) 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.” The department must withhold the account numbers we have marked under section 552.136.<sup>2</sup>

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. The Texas driver’s license information that we have marked must be withheld under section 552.130 and the account numbers that we have marked must be withheld under section 552.136 of the Government Code. The remaining information must be released to the requestor in accordance with article 2.29 of the Code of Criminal Procedure.

*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

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<sup>2</sup>We note that the requestor has a right of access to his own private information under section 552.023 of the Government Code that the department would be required to withhold from the public under section 552.136 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 herself). Accordingly, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

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,



Heather Pendleton Ross  
Assistant Attorney General  
Open Records Division

HPR/mcf

Ref: ID# 281462

Enc: Submitted documents

c: Mr. Mark Verhalen  
4420 Grassmere  
Dallas, Texas 75205  
(w/o enclosures)