



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 24, 2007

Ms. Angela M. DeLuca  
Assistant City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR2007-09326

Dear Ms. DeLuca:

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# 284629.

The College Station Police Department (the "department") received a request for a specified police report. You state that you have provided the requestor with a portion of the requested information. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted incident report involves 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:

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<sup>1</sup> Although you also cite to section 552.103 of the Government Code, you have not submitted arguments explaining the applicability of that exception. Thus, the department has waived its claim under section 552.103. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally).

(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. In this instance, the report at issue pertains to fraud and the requestor is identified as the victim. The alleged offense occurred after September 1, 2005. Thus, the submitted information 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 the submitted information 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 information. Therefore, the department may not withhold the submitted information on that ground. We note, however, that the submitted documents contain information that is protected under sections 552.136 and 552.137 of the Government Code.<sup>2</sup> As these exceptions constitute confidentiality provisions, we will address their applicability.

Section 552.136 states in part that “[n]otwithstanding any other provision of [the Act], 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(b); *see also id.* § 552.136(a) (defining “access device”). In this instance, the submitted information includes a bank account number that does not belong to the requestor. The department must withhold the account number we have marked under section 552.136.

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<sup>2</sup> Unlike other exceptions to disclosure, this office will raise sections 552.136 and 552.137 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).

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not of a type specifically excluded by section 552.137(c). Thus, the department must withhold the e-mail addresses we have marked under section 552.137, unless the owners of the e-mail addresses have affirmatively consented to their release. *See id.* § 552.137(b).

In summary, the department must withhold the information we have marked under sections 552.136 and 552.137 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 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).

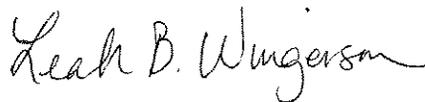
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 284629

Enc. Submitted documents

c: Mr. Mahesh Padanad  
1100 Hensel Drive, Apt.# T1J  
College Station, Texas 77840  
(w/o enclosures)