



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2007

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR2007-13657

Dear Ms. Chang:

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 #292161.

The Houston Police Department (the "department") received a request for all incident reports pertaining to the fraudulent use of checks by a named individual during a specified period of time. You state that the department "will provide the requestor with a copy of the [p]ublic [r]elease [i]nformation portion of the requested incident report." See Gov't Code § 552.108(c) (basic information about an arrested person, arrest, or crime is not excepted under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). 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 information pertains to the fraudulent use of a person's identifying information, and the alleged offense occurred after September 1, 2005; accordingly, the information is subject to article 2.29. The requestor in this instance is an attorney, and it is unclear whether he represents the victim. We note that if the requestor is acting as the victim's authorized representative, then he has a right of access to the submitted police report. *See* Crim. Proc. Code art. 2.29. Section 552.108 of the Government Code does not make information confidential for purposes of article 2.29. Therefore, if the requestor is acting as the victim's authorized representative, then the submitted information must be released to the requestor pursuant to article 2.29.¹

However, in the event that the requestor is not acting as the victim's authorized representative, then the submitted information is not subject to article 2.29 of the Code of Criminal Procedure and we will address your claim under section 552.108 of the Government Code. Section 552.108 excepts from public disclosure "[i]nformation held by

¹We note that, if this requestor does represent the victim, the submitted information contains private information belonging to victim to which, in this instance, the requestor would have a right of access. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles).

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)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit 2 relates to an inactive criminal investigation of an offense for which the statute of limitations has not run. You further state that “in the event that additional information is obtained, [the department] will continue its investigation.” Based on your representations and our review, we conclude that section 552.108(a)(1) is applicable to the submitted police report. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Thus, with the exception of the basic information, which you state has been released, the department may withhold the submitted information based on section 552.108(a)(1) of the Government Code. *See* Gov’t Code § 552.108(c) (section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime).

In summary, if the requestor is acting as the victim’s authorized representative, the department must release the submitted information pursuant to article 2.29 of the Code of Criminal Procedure. However, if the requestor is not the authorized representative of the victim, then, with the exception of basic information, the submitted information may be withheld 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 292161

Enc. Submitted documents

c: Mr. Stephen R. Klaffky
Brown, Rudnick, Berlack, & Israels, LLP
Cityplace 1
185 Asylum Street
Hartford, Connecticut 06103
(w/o enclosures)