



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2008

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Division
1400 South Lamar
Dallas, Texas 75215

OR2008-01688

Dear Ms. Armstrong:

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# 301315.

The Dallas Police Department (the "department") received a request for a specified incident report. You claim that portions of the requested information are 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.

We note that the submitted police 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 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.

In this instance, the information at issue pertains to the fraudulent use of a person's credit card, which constitutes an alleged violation of section 32.51. The requestor here is the spouse of the victim, and the alleged offense occurred after September 1, 2005. Therefore, if the requestor is acting as the victim's authorized representative, then he has a right of access to this information. See Crim. Proc. Code art. 2.29. 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). 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. You note, however, that the report contains information that is protected by section 552.130 of the Government Code. As this exception is a confidentiality provision, we will address its applicability.

Section 552.130 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 motor vehicle record information that you have marked under section 552.130 of the Government Code.

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. We agree that the department may withhold the social security number you have marked pursuant to section 552.147 of the Government Code.

In the event that the requestor is not acting as the victim's authorized representative, then the information at issue 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 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[.]” *Id.* § 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 the submitted information relates to a pending criminal investigation. Based on your representations and our review, 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.] 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). Therefore, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code 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 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 the department may withhold the information you have marked pursuant to section 552.108 of the Government Code. Regardless of whether the requestor is acting as the victim’s authorized representative, the department must withhold the Texas motor vehicle record information you have marked pursuant to section 552.130 of the Government Code, and may withhold the social security number you have marked under section 552.147 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 301315

Enc. Submitted documents

c: Mr. Billy Priest
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(w/o enclosures)