



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2009

Ms. Kristy Ashberry
City Secretary
City of Rockwall
385 South Goliad
Rockwall, Texas 75087

OR2009-16186

Dear Ms. Ashberry:

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# 361752.

The Rockwall Police Department (the "department") received a request for a specified offense report. 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 reviewed the submitted information.

We note that the submitted incident report involves an alleged violation of section 32.51 of the Penal Code, which provides that "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses . . . identifying information of another person without the other person's consent[.]" 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.

The submitted report pertains to the alleged fraudulent use of the requestor's identifying information, and the alleged offense occurred after September 1, 2005; accordingly, the information is subject to article 2.29. You seek to withhold the submitted information under section 552.108 of the Government Code. As a general rule, however, 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, the department may not withhold any of the submitted information under section 552.108. Instead, the submitted report must be released to the requestor in its entirety pursuant to article 2.29 of the Code of Criminal Procedure.¹

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

¹We note that the requestor has a right of access to information in the submitted documents that otherwise would be excepted from release under the Act. Thus, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Paigelay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 361752

Enc. Submitted documents

cc: Requestor
(w/o enclosures)