



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2009

Mr. Brett Colston
Assistant Chief of Police
Waxahachie Police Department
216 North College
Waxahachie, Texas 75165

OR2009-17365

Dear Mr. Colston:

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# 368636.

The Waxahachie Police Department (the "department") received a request for a copy of incident report number 0900606378. You claim 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.

We note the submitted report is related to an alleged violation of section 32.51 of the Penal Code, which provides, "[a] person commits an offense if the person, with intent to harm or defraud another, obtains, possesses, transfers, or uses an item of . . . identifying information of another person without the other person's consent[.]" 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 June 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, the submitted report relates to the fraudulent use of identifying information, 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. 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, the submitted information may not be withheld under section 552.108. You claim the submitted information contains information that is subject to section 552.130 of the Government Code. As this exception is a confidentiality provision, we will address its applicability to the submitted information.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. Although the department would ordinarily be required to withhold driver's license information under section 552.130, this section protects personal privacy. Therefore, the requestor has a right of access to her own Texas motor vehicle information under section 552.023 of the Government Code and it may not be withheld from her based on section 552.130. *See* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the department may not withhold the submitted driver's license number from

this requestor under section 552.130.¹ Thus, the submitted information must be released in its entirety to this requestor pursuant to article 2.29 of the Code of Criminal Procedure.

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 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/sdk

Ref: ID# 368636

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note, because this requestor has a special right of access to the information being released, the department must again ask this office for a decision if it received another request for this report from a different requestor.