



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2010

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2010-12286

Dear Mr. Alicie:

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# 390292.

The Baytown Police Department (the "department") received a request for the police report pertaining to case number 2010-12792. You claim the portions of the submitted information you marked are excepted from disclosure under sections 552.101, 552.147, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The submitted information 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. In this instance, the submitted report, in part, involves the alleged theft and fraudulent use of a credit card, which constitutes a violation of section 32.51 of the Penal Code. The requestor in this instance is the victim listed in the report, and the alleged offense occurred after September 1, 2005. Accordingly, the submitted report is subject to article 2.29 of the Code of Criminal Procedure and must be released to this requestor, except to the extent it contains confidential information.

You seek to withhold portions of the report under sections 552.101, 552.147, and 552.151 of the Government Code. As you acknowledge, subsection 552.147(b) generally permits a governmental body to redact a living person's social security number without seeking a decision from this office. *See* Gov't Code § 552.147(b). In this case, article 2.29(b) provides this requestor with a right of access to all information in the submitted report that is not confidential. However, section 552.147 does not make information confidential by law. *See id.* § 552.147(a) (section 552.147 does not make the social security number of a living person confidential). Thus, in this case the department may not rely on section 552.147(b) of the Government Code to withhold the partial social security numbers you marked. However, because sections 552.101 and 552.151 are confidentiality provisions, we will consider your arguments under those exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree the information you marked reveals information about an individual identified in the report that is highly intimate or embarrassing and of no legitimate interest. Thus, we agree the department must withhold the information you

marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.151 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.151. You inform us that the information you have marked under section 552.151 relates to undercover department officers. You represent release of this information would subject these undercover officers to a "substantial threat of physical harm." Based on your representation, we conclude you have demonstrated that release of the information you have marked would subject the officers to a substantial threat of physical harm. Therefore, the department must withhold the information you have marked under section 552.151 of the Government Code.

In summary, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information you marked under section 552.151 of the Government Code. The remaining information must be released to this requestor.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 390292

Enc. Submitted documents

cc: Requestor
(w/o enclosures)