



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 17, 2011

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County Attorney
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2011-06923

Dear Ms. Rangel:

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# 422344.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for four specified call slips and one specified offense report. You state the sheriff has released three of the four requested call slips to the requestor. You claim the submitted 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 the submitted information concerns an alleged violation of section 32.51 of the Penal Code, which provides "[a] person commits an offense if the person, with the 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)(1); *see also id.* § 1.07(a)(38) (defining "person" to include individual, corporation, or association). 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 information involves the use of a person's identifying information, which constitutes an alleged violation of section 32.51, and the alleged offense occurred after September 1, 2005. We note, in this instance, the requestor may be the authorized representative of the victim. If the requestor is the authorized representative of the victim, then the submitted information is subject to article 2.29 and must be released to the requestor, except to the extent it contains confidential information. You seek to withhold the submitted information under section 552.108 of the Government Code. As a general rule, the general 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). Accordingly, if the requestor is the authorized representative of the victim, then the sheriff must release the submitted information to this requestor.

In the event the requestor is not the authorized representative of the victim, we address your argument under section 552.108(a)(1) of the Government Code. Section 552.108 excepts from 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[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal investigation. Based on your representation, we determine the release of the submitted information 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find section 552.108(a)(1) is applicable to the submitted information.

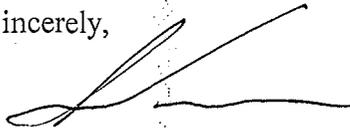
Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the sheriff may withhold the submitted information pursuant to section 552.108(a)(1).

In summary, if the requestor is acting as the victim's authorized representative, then the sheriff must release the submitted information to the requestor 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 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 422344

Enc. Submitted documents

c: Requestor
(w/o enclosures)