



January 30, 2015

Ms. Amanda Pell
Open Records Specialist
Baytown Police Department
City of Baytown
3200 North Main Street
Baytown, Texas 77521

OR2015-01910

Dear Ms. Pell:

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# 553812 (PIR# 3719).

The Baytown Police Department (the "department") received a request for a specified incident report. The department indicates it has made some of the requested information available to the requestor, but claims some of the submitted information is excepted from disclosure under sections 552.108, 552.130, 552.147, and 552.152 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

We note the submitted information concerns an alleged violation of section 32.51 of the Penal Code. Section 32.51(b)(1) 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). 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:

¹Although the department also raises section 552.101 of the Government Code, it has not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume the department no longer asserts this exception. See Gov't Code §§ 552.301, .302.

(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.

As noted above, the submitted information relates to an alleged violation of section 32.51 of the Penal Code. The requestor and his spouse are the victims of the alleged identity theft, and the alleged offense occurred after September 1, 2005. Therefore, the submitted information is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor, except to the extent the information is confidential. Crim. Proc. Code art. 2.29(b). Although you seek to withhold some of the submitted information under sections 552.108 and 552.147 of the Government Code, these exceptions do not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Thus, the city may not withhold the submitted information from this requestor under section 552.108 or 552.147 of the Government Code. However, because sections 552.1175, 552.130, and 552.152 of the Government Code are confidentiality provisions, we will address their applicability to the submitted information.²

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. We understand you have marked social security numbers pertaining to department officers. Therefore, the department must withhold these social security numbers under section 552.1175 if the officers at issue elect to restrict access to them in accordance with section 552.1175(b) of the Government Code. However, the department may not withhold these social security numbers under section 552.1175 if the officers do not elect to restrict access to this information in accordance with section 552.1175(b).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. We agree the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.152 of the Government Code provides the following:

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.

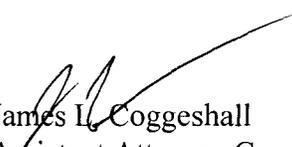
Gov't Code § 552.152. The department states the information it has marked under section 552.152 relates to a special operations and undercover police officer. The department also asserts release of this information would subject the officer to a substantial threat of physical harm. Based on these representations and our review, we conclude the department has demonstrated release of the information at issue would subject the officer to a substantial threat of physical harm. Therefore, the department must withhold the information you have marked under section 552.152 of the Government Code.

To conclude, the department must withhold the social security numbers of department officers you have marked under section 552.1175 of the Government Code if the officers at issue elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The department must also withhold the information you have marked under sections 552.130 and 552.152 of the Government Code. The department must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 553812

Enc. Submitted documents

c: Requestor
(w/o enclosures)