



January 30, 2015

Ms. Valorie Settles  
McLennan County Sheriff's Office  
County of McLennan  
901 Washington Avenue  
Waco, Texas 76701

OR2015-01915

Dear Ms. Settles:

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# 555196.

The McLennan County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. The sheriff's office states it will provide some of the requested information to the requestor, but claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note some of the submitted information appears to be records of a grand jury. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined a grand jury, for purposes of the Act, is a part of the judiciary and, therefore, not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury and are also not subject to the Act. Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Thus, to the extent the sheriff's office holds the information at issue as agent of the grand jury, the information consists of records of the judiciary not subject to disclosure under the Act. To the extent the submitted information does not consist of records of the judiciary, we will address your exceptions to disclosure.

We next 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:

(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 is the victim 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 the sheriff’s office seeks to withhold the submitted information under section 552.108 of the Government Code, this exception does 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 sheriff’s office may not withhold the submitted information from this requestor under section 552.108 of the Government Code. However, because sections 552.130, 552.136, and 552.137 of the Government Code

are confidentiality provisions, we will address their applicability to the submitted information.<sup>1</sup>

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.* The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). The sheriff's office must withhold the account numbers we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code § 552.137(a)-(c).* Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The sheriff's office does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the sheriff's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.

To conclude, to the extent the sheriff's office holds the information at issue as agent of the grand jury, the information consists of records of the judiciary not subject to disclosure under the Act. To the extent the submitted information does not consist of records of the judiciary, the sheriff's office must withhold the information we have marked under sections 552.130, 552.136, and 552.137 of the Government Code, but must release the remaining information.<sup>2</sup>

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).*

<sup>2</sup>Because the requestor has a special right of access to the information being released, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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# 555196

Enc. Submitted documents

c: Requestor  
(w/o enclosures)