



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 3, 2015

Ms. Judith N. Benton  
Assistant City Attorney  
Legal Services Department  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2015-15869

Dear Ms. Benton:

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# 579357 (Ref. No. LGL-15-226).

The Waco Police Department (the "department") received a request for three specified reports. You state the department has released some information. You claim the submitted information is excepted from disclosure under section 552.108 and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

The submitted information involves 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). 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:

---

<sup>1</sup>Although you do not raise section 552.130 in your brief, we understand you to raise this section based on your markings in the submitted information.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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.

In this instance, the submitted information pertains to reports of fraudulent use of identifying information, which constitutes an alleged violation of section 32.51. We note the requestor is the representative of the victim of the alleged identity theft listed in the reports, and the alleged offenses occurred after September 1, 2005. Therefore, the submitted reports are subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor. *See* Crim. Proc. Code art. 2.29. Although you seek to withhold the reports 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). Therefore, the submitted reports may not be withheld under section 552.108 of the Government Code. However, because section 552.130 is a confidentiality provision, we will address the applicability of that exception to reports at issue.

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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we agree the information you marked consists of motor vehicle record information. However, we note section 552.130 protects personal privacy. Accordingly, as the victim's representative, the requestor has a right of access to the motor vehicle record information at issue under section 552.023 of the Government Code and it may not be withheld from her under

section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, except for the information we marked for release, the department must withhold the motor vehicle record information it marked, and the additional information we marked, under section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/cbz

Ref: ID# 579357

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>3</sup>We note the information to be released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See Gov't Code* § 552.147(b).