



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 12, 2006

Ms. Mary Jean Meier  
Administrative Support II  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2006-07424

Dear Ms. Meier:

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# 253720.

The Baytown Police Department (the "department") received a request for a specified incident report. You claim that certain highlighted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. You claim that portions of the requested information are excepted from disclosure under section of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted records involve an alleged violation of section 32.51 of the Penal Code, which provides that "[a] person commits an offense if the person obtains, possesses, transfers, or uses identifying information of another person without the other person's consent and with intent to harm or defraud another." Penal Code § 32.51(b). 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 incident report pertains to the fraudulent use of the victim's social security number and driver's license number, which constitutes an alleged violation of section 32.51. The requestor here is the victim listed in the report. 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." *Id.* Because we are unable to determine based on the information provided whether any element of the alleged offense occurred prior to September 1, 2005, we must rule conditionally. Thus, if the alleged offense occurred on or after September 1, 2005, the incident report is subject to article 2.29. In this event, section 552.108 of the Government Code does not make information confidential. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally); *see also* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976) (exceptions to disclosure do not apply to information made public by statute). However, as sections 552.130 and 552.147 of the Government Code make information confidential for purposes of article 2.29, we will address the applicability these sections to the information you have marked. *See* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree that the driver's license number you have marked in pink is confidential under section 552.130. Therefore, the department must withhold the driver's license number you have marked under section 552.130 in the event that the incident report is subject to article 2.29.

Additionally, we note that the department has marked in green social security numbers and partial social security numbers to be withheld under section 552.147 of the Government Code. Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Therefore, we agree that the information the department has marked in green must be withheld under section 552.147 in the event that the incident report is subject to article 2.29.<sup>1</sup>

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<sup>1</sup>We note that 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 a decision from this office under the Act.

However, if the alleged offense did not occur on or after September 1, 2005, we will address your argument under section 552.108 of the Government Code. Section 552.108(a)(1) 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 Gov’t Code §§ 552.108(a)(1), 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the incident report relates to a pending criminal investigation. Based on this representation, we conclude that the release of the information you have marked in orange 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), writ ref’d n.r.e., 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, in the event that the incident report is not subject to article 2.29, the department may withhold the information you have marked in orange under section 552.108(a)(1).<sup>2</sup>

In summary, if the alleged offense occurred on or after September 1, 2005, the department must release the incident report redacting the driver’s license number you have marked in pink pursuant to section 552.130 of the Government Code and the social security number and partial social security numbers you have marked in green pursuant to section 552.147 of the Government Code. If the alleged offense did not occur on or after September 1, 2005, the department may withhold the information you have marked in orange under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Candice M. De La Garza  
Assistant Attorney General  
Open Records Division

CMD/krl

Ref: ID# 253720

Enc. Submitted documents

c: Ms. Anita Jackson  
4904 Redell Road  
Baytown, Texas 77521  
(w/o enclosures)