



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 15, 2007

Ms. Julie Joe  
Assistant County Attorney  
Travis County Attorney's Office  
P.O. Box 1748  
Austin, Texas 78767

OR2007-05969

Dear Ms. Joe:

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# 281763.

The Travis County Sheriff's Office (the "sheriff") received a request for information relating to a report of identity theft. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.<sup>1</sup>

We note that the submitted report is related to 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).

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<sup>1</sup>We note that you have not demonstrated that the sheriff complied with section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301. In this instance, however, we need not determine whether the submitted information must be released pursuant to section 552.302 of the Government Code. See *id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

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 Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, the submitted report involves an alleged identity theft, and the requestor is listed as the victim. Furthermore, the report is related to an offense that occurred after September 1, 2005. Therefore, the report is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor, except to the extent that it contains confidential information. You seek to withhold the report under sections 552.101 and 552.108 of the Government Code. As a general rule, however, the 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). Thus, sections 552.101 and 552.108 are not applicable to the submitted report.<sup>2</sup> As the sheriff claims no other

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<sup>2</sup>We note that the report contains information relating to the requestor that the sheriff would be required to withhold from the public under sections 552.130 and 552.136 of the Government Code. However, those exceptions protect personal privacy interests. Therefore, the requestor has a right of access to her own private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

exception to disclosure, the report must be released in accordance with article 2.29 of the Code of Criminal Procedure.<sup>3</sup>

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 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.

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<sup>3</sup>We note that the submitted information contains social security numbers. 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. The requestor has a right of access, however, to her own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

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,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large, circular flourish on the left side and a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 281763

Enc: Submitted documents

c: Ms. Anita Hines  
c/o Ms. Julie Joe  
Travis County Attorney's Office  
P.O. Box 1748  
Austin, Texas 78767  
(w/o enclosures)