



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 31, 2007

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston - Legal Department  
P. O. Box 368  
Houston, Texas 77001-0368

OR2007-06806

Dear Ms. Chang:

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# 279982.

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

Initially, we note that the submitted incident report involves alleged violations 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). For purposes of section 32.51, "identifying information" includes an individual's name, social security number and government issued identification 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 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 report pertains to forgery and use of the victim's social security number and Texas driver's license, which constitute violations of section 32.51. The requestor is a claims representative for an insurance company. Thus, the requestor may be the representative of the victim identified in the report. The alleged offense occurred after September 1, 2005. Because we are unable to determine based on the information provided whether the requestor is the representative of the victim, we must rule conditionally. If the requestor is the representative of the victim, the submitted information is subject to article 2.29 and must be released to the requestor.<sup>1</sup> You seek to withhold the submitted information under section 552.108 of the Government Code. As a general rule, 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, section 552.108 is not applicable to the submitted information. Therefore, to the extent that the requestor is the representative of the victim, the submitted information must be released in its entirety to the requestor. However, if the requestor is not the representative of the victim, the submitted information is not subject to article 2.29 and we will address your arguments under section 552.108 of the Government Code.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the

---

<sup>1</sup>Normally, article 2.29 requires redaction of information that is confidential under sections 552.130 and 552.147 of the Government Code. Here, however, if the requestor is the representative of the victim, this information must be released. *See* Gov't Code § 552.023(b)(governmental body may not deny access to person whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principals). However, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the submitted information relates to a criminal investigation that is inactive pending additional leads. You also inform us that the statute of limitations has not run and this investigation may be reactivated once additional leads are developed. Based on your representations, we conclude that the release of the submitted information 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic front page offense report information, you may withhold the submitted information under section 552.108(a)(1).

In summary, if the requestor is the authorized representative of the victim, the submitted information must be released in its entirety pursuant to article 2.29 of the Code of Criminal Procedure. If the requestor is not the authorized representative of the victim, with the exception of basic information, the department may withhold the submitted information pursuant to 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 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,



Kara A. Batey  
Assistant Attorney General  
Open Records Division

KAB/mcf

Ref: ID# 279982

Enc. Submitted documents

c: Mr. Johnny J. Tijerina  
Claims Representative  
Progressive County Mutual Insurance Company  
3429 Executive Center Drive, Suite 150  
Austin, Texas 78731  
(w/o enclosures)