



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 5, 2007

Mr. David K. Walker  
Montgomery County Attorney  
207 West Phillips, 1<sup>st</sup> Floor  
Conroe, Texas 77301

OR2007-13024

Dear Mr. Walker:

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# 291119.

The Montgomery County Sheriff's Office (the "sheriff") received a request for a specified police report. 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 reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes such as section 58.007 of the Family Code. Section 58.007 makes confidential the law enforcement records of a juvenile who, on or after September 1, 1997, engaged in delinquent conduct or conduct indicating a need for supervision. *See* Fam. Code § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). The relevant language of section 58.007(c) reads as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). We note, however, that section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party; it is only applicable to juveniles listed as suspects or offenders. *See id.* § 58.007. In the sheriff’s brief and affidavit, you state that the requested information relates to criminal activity involving “possible juvenile suspects.” Furthermore, upon review of the submitted documents, we note that the suspects are listed as having an age range of 16-18, rather than a specific age. Thus, we find that the sheriff has failed to demonstrate that the submitted documents identify a juvenile suspect or offender. Accordingly, the submitted information may not be withheld under section 552.101 on this basis in conjunction with section 58.007 of the Family Code.

We note that the submitted 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. 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 report pertains to the unauthorized use of a credit card, which constitutes an alleged violation of section 32.51. The alleged offense occurred after September 1, 2005. Upon review, we note that the requestor appears to be the representative of the victim identified in the report. Therefore, if the requestor is acting as the victim’s authorized representative, then she has a right of access to this information. *See* Crim. Proc. Code art. 2.29. We note that section 552.108 of the Government Code does not make information confidential for purposes of article 2.29. Therefore, to the extent the requestor is acting as the victim’s authorized representative, the sheriff must release the submitted information to the requestor.<sup>1</sup>

In the event that the requestor is not acting as the victim’s authorized representative, then the information at issue is not subject to article 2.29 of the Code of Criminal Procedure and we will address your claim 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 id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide documentation showing, that the submitted police report relates directly to an active criminal investigation. Based on this representation, 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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<sup>1</sup>The information being released includes Texas motor vehicle record information, a credit card number, and a social security number. Ordinarily, this information would be confidential under sections 552.130, 552.136, and 552.147 of the Government Code, respectively. However, if the requestor is the authorized representative of the victim, the requestor has a right of access to this information under section 552.023 of the Government Code. *See* Gov’t Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). In the event that the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.

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 Publishing 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). Thus, with the exception of basic information, the sheriff may withhold the submitted report under section 552.108(a)(1).

In summary, if the requestor is acting as the victim's authorized representative, the sheriff must release the submitted information pursuant to section 2.29 of the Code of Criminal Procedure. If the requestor is not the authorized representative of the victim, then, with the exception of basic information, the submitted information may be withheld under section 552.108 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,

A handwritten signature in cursive script that reads "Jordan Johnson".

Jordan Johnson  
Assistant Attorney General  
Open Records Division

JJ/jb

Ref: ID# 291119

Enc. Submitted documents

c: Ms. Anissa Coppin  
Ameraflex Rubber & Gasket  
317 Georgia Avenue  
Deer Park, Texas 77536  
(w/o enclosures)