



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2008

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606

OR2008-03648

Dear Mr. Ray:

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# 307406.

The City of Longview (the "city") received a request for information pertaining to a specified investigation. You claim that the requested information is excepted from disclosure under sections 552.103, 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 must address your assertion that the requestor does not have a right of access to the submitted information under article 2.29 of the Code of Criminal Procedure. Section 32.51 of the Penal Code 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 financial institution account number. *Id.* § 32.51(a)(1)(C). Article 2.29 pertains to 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.

The requestor is the victim in the submitted offense report, and in it he alleges that his credit card was stolen and fraudulently used. You argue that article 2.29 is not applicable here because the police did not investigate the incident as a violation of section 32.51; instead, you state that the requested report only pertains to investigations of alleged violations of sections 31.03 (theft) and 32.31 (credit card abuse) of the Penal Code. However, all of the elements required to establish a violation of section 32.51 are present here; thus, we conclude that the submitted information pertains to an alleged violation of section 32.51. Accordingly, the report is subject to article 2.29. Sections 552.103 and 552.108 of the Government Code do not make information confidential for purposes of article 2.29; therefore, the department may not withhold the submitted information under either of those sections. Although section 552.130 of the Government Code does make information confidential for purposes of article 2.29, the requestor has a right of access to his own information under section 552.023 of the Government Code. *See Gov't Code § 552.023(a)* ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

The submitted information contains the social security numbers of the requestor and one of the suspects. 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

to his own number pursuant to section 552.023, but the city may withhold the suspect's social security number under section 552.147.

To conclude, the city may withhold the suspect's social security number under section 552.147 of the Government Code. The city must release the remaining information pursuant to article 2.29 of the Code of Criminal Procedure.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jh

Ref: ID# 307406

Enc. Submitted documents

c: Mr. Jeremy L. Quinn
c/o Robert R. Ray
Assistant City Attorney
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(w/o enclosures)