



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2008

Ms. Linda Rhodes
City Secretary
City of Lake Worth
3805 Adam Grubb
Lake Worth, Texas 76135-3509

OR2008-17322

Dear Ms. Rhodes:

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# 330890.

The Lake Worth Police Department (the "department") received a request for incident report number 0800029691. You claim the submitted incident report is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted incident report involves, among other things, an alleged violation of section 32.51 of the Penal Code, which provides "[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 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005 and provides:

(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 submitted offense report pertains to, among other things, the fraudulent use of the requestor's identifying information, and the alleged offense occurred after September 1, 2005; accordingly, the report is subject to article 2.29. You claim the submitted report is excepted under section 552.108 of the Government Code. This exception, however, does not make information confidential for purposes of article 2.29. Therefore, the department may not withhold the submitted report under section 552.108 of the Government Code. You also claim portions of the submitted report are excepted under sections 552.101, 552.130, and 552.136 of the Government Code. Because these exceptions are confidentiality provisions, we will consider your arguments under these exceptions.

You claim the requestor's bank account number is confidential under both section 552.101 of the Government Code in conjunction with common-law privacy and section 552.136 of the Government Code. Section 552.101 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 the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Section 552.136 states "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Both of these exceptions protect privacy interests. Because the bank account number at issue belongs to the requestor, it may not be withheld from her based on her own privacy interests. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy

interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Therefore, the department may not withhold the requestor's bank account number under either section 552.101 in conjunction with common-law privacy or section 552.136 in this instance.

You seek to withhold the driver's license and license plate numbers in the submitted report under section 552.130 of the Government Code, which provides 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). Section 552.130 protects privacy interests. In this case, the submitted report includes the requestor's Texas driver's license number. The requestor has a right of access under section 552.023 to her own driver's license number. *Id.* § 552.023(a), (b). Therefore, the requestor's driver's license number may not be withheld under section 552.130 in this instance. The submitted report includes Texas driver's license and license plate numbers that do not belong to the requestor. We have marked this information, which must be withheld under section 552.130 of the Government Code. The remaining information must be released.¹

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). If the governmental body does not file suit over 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

¹ The remaining information contains the requestor's bank account number and Texas driver's license number. Because this information is generally confidential with respect to the general public, if the department receives another request for this particular information from a different requestor, the department should again seek a decision from this office. Also, the remaining information contains a social security number that does not belong to the requestor. 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.