



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2009

Ms. Candice De La Garza
Assistant City Attorney
City of Houston
P. O. Box 368
Austin, Texas 77001-0368

OR2009-15665

Dear Ms. De La Garza:

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# 360494.

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

We note that the submitted incident report involves an alleged violation of section 32.51 of the Penal Code, which provides that "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of (1) identifying information of another person without the other person's consent[.]" Act of June, 15, 2007, 80th Leg., R.S., ch. 1173, § 2; 2007 Tex. Gen. Laws 4019, *amended by* Act of May 12, 2009, 81st Leg., R.S., ch. 87, § 19.002, 2009 Tex. Sess. Law Serv. 208, 298 (Vernon). For purposes of section 32.51, "identifying information" includes an individual's name and financial institution account number. Penal Code § 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 an alleged credit card abuse, which constitutes an alleged violation of section 32.51, that occurred after September 1, 2005. The requestor here is an employee of the financial institution that issued the card to the victim. Thus, the requestor may be an authorized representative of the victim of the alleged identity theft listed in the submitted report. In that instance, the submitted 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. *See* Crim. Proc. Code art. 2.29. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, if the requestor is an authorized representative of the alleged victim, section 552.108 is not applicable, and the submitted information may not be withheld on that basis.

To the extent the requestor is an authorized representative of the victim of the alleged identity theft, we note the submitted information includes an e-mail address subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purposes of communicating electronically with a governmental body," unless the member of the public consents to its release, or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137 (a)-(c). We have marked an e-mail address in the submitted information that is not of a type specifically excluded by subsection (c). Accordingly, if the requestor is an authorized representative of the alleged victim, the department must withhold the marked

e-mail address under section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure.

To the extent the requestor is not an authorized representative of the victim of the alleged identity theft, we will address your argument against disclosure. Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information is related to an ongoing criminal investigation. Based on this representation and our review, we conclude that section 552.108(a)(1) is applicable in this instance. *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).

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). If the requestor is not an authorized representative of the victim of the alleged identity theft, the department may withhold the rest of the submitted information under section 552.108(a)(1).

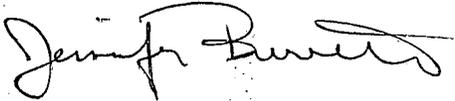
In summary, if the requestor is an authorized representative of the victim of the alleged identity theft, section 552.108 is not applicable, and the submitted information may not be withheld on that basis. In that instance, the department must withhold the e-mail address we have marked under section 552.137, and as you raise no additional exceptions to disclosure, the remaining information must be released.¹ If the requestor is not an authorized representative of the victim of the alleged identity theft, with the exception of basic information, the department may withhold the rest of the submitted information under section 552.108(a)(1).

This letter ruling is limited to the particular information 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 information or any other circumstances.

¹We note because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from a requestor without such a right of access.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 360494

Enc. Submitted documents

c: Requestor
(w/o enclosures)