



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 23, 2010

Mr. David K. Walker  
County Attorney  
Montgomery County  
207 West Phillips, Suite 100  
Conroe, Texas 77301

OR2010-04026

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# 373295.

The Montgomery County Sheriff's Office (the "sheriff") received a request for Offense Report No. 09A019783. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

The submitted information 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 . . . identifying information of another person without the other person's consent[.]" Penal Code § 32.51(b)(1). For purposes of section 32.51, "identifying information" includes an individual's name and financial institution account 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:

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<sup>1</sup>Although you also raise section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302.

(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 June 17, 2005, 79<sup>th</sup> Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885. The submitted information pertains to the unauthorized use of another person's credit card, which constitutes an alleged violation of section 32.51. The alleged offense occurred after September 1, 2005. We note the requestor may be an authorized representative of the victim. Because we are unable to determine, based on the information provided, whether the requestor is the representative of the victim, we must rule in the alternative. If the requestor is the authorized representative of the victim, then the submitted information is subject to article 2.29 and must be released to the requestor, except to the extent it contains confidential information. 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 information subject to article 2.29. The submitted information contains information that is subject to section 552.130 of the Government Code. As this exception is a confidentiality provision, we will address its applicability to the submitted information.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). We note that section 552.130 protects personal privacy. In this instance, if the requestor is the victim's authorized representative, then the sheriff may not withhold the victim's Texas motor vehicle record information from the requestor under section 552.130 of the Government Code. *See id.* § 552.023 (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. However, we have marked Texas motor vehicle record information that does not belong to the victim that must be withheld under section 552.130 of the Government Code.<sup>2</sup> The sheriff must release the remaining report to this requestor pursuant to article 2.29 of the Code of Criminal Procedure.

We now address your argument under section 552.108 in the event that the requestor is not the authorized representative of the victim. 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(a)(1) must reasonably explain how and why the 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 state that the submitted information relates to a pending criminal case. Based on your representation and our review, we conclude that the release of the requested 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). Accordingly, section 552.108(a)(1) is applicable to the information you seek to withhold.

As you acknowledge, section 552.108 does not except from required public 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*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that you have marked the entire narrative portion of the submitted report as information you seek to withhold under section 552.108. However, the remaining portions of the report do not contain information sufficient to satisfy the requirement that a "detailed description of the offense" be released as basic information. *See* ORD 127. Accordingly, with the exception of basic information, which must include a detailed description of the offense, the sheriff may withhold the submitted report under section 552.108(a)(1) of the Government Code.

In summary, if the requestor is the authorized representative of the victim, then the sheriff must generally release the submitted report to this requestor pursuant to article 2.29 of the

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<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Code of Criminal Procedure.<sup>3</sup> However, the sheriff must withhold the information we have marked under section 552.130 of the Government Code. Conversely, if the requestor is not the authorized representative of the victim, then, with the exception of basic information, the sheriff may withhold the submitted report under section 552.108(a)(1) of the Government Code.

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.

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](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,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 373295

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note you have highlighted social security numbers. 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. If the requestor is the authorized representative of the victim, then she has a right of access to the victim's social security number. See Gov't Code § 552.023(b).