



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 29, 2010

Mr. Gregory A. Alicie  
Open Records Specialist  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2010-04367

Dear Mr. Alicie:

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# 379119.

The Baytown Police Department (the "department") received a request for a specified police report. You state you will redact the social security numbers under section 552.147 of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note 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 . . . identifying information of another person without the other person's consent[.]" Penal Code § 32.51(b)(1). 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:

---

<sup>1</sup>Section 552.147(b) of the Government Code authorizes a government 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.

(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 credit card abuse, and the requestor is listed as the victim. Furthermore, the report is related to an offense that occurred after September 1, 2005. Therefore, 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 the submitted report 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, the submitted incident report may not be withheld under section 552.108 of the Government Code. As you raise no further exceptions to disclosure, the submitted information must be released to the requestor.<sup>2</sup>

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.

---

<sup>2</sup>We note, because this requestor has a special right of access to the information being released, the department must again ask this office for a decision if it received another request for this report from a different requestor.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 379119

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)