



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2010

Mr. Whitt L. Wyatt
Assistant City Attorney
City of Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2010-4395

Dear Mr. Wyatt:

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# 374051 (file number 10-007).

The Richardson Police Department (the "department") received a request for all information related to incident report number 09-105072. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information concerns an alleged violation of section 32.51 of the Penal Code, which provides "[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); *see also id.* § 1.07(a)(38) (defining "person" to include individual, corporation, or association). 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 the 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, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, the submitted information involves the use of a person's identifying information, which constitutes an alleged violation of section 32.51, and the alleged offense occurred after September 1, 2005. The requestor here is an agent of the victim's insurance company, and may be the authorized representative of the victim. Therefore, if the requestor is acting as the victim's authorized representative, then the requestor has a right of access to this information, except to the extent it contains confidential information. *See* Crim. Proc. Code art. 2.29. Sections 552.103 and 552.108 of the Government Code do not make information confidential for purposes of article 2.29. However, because portions of the submitted information are subject to sections 552.130 and 552.136 of the Government Code, which are confidentiality provisions, we will address these exceptions.¹

Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1)-(2). We have marked the information that must be withheld under section 552.130 of the Government Code.

Section 552.136 provides that "[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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). The department must withhold the information we have marked pursuant to section 552.136 of the Government Code.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Therefore, if the requestor is acting as the victim's authorized representative, then the department must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code; the remaining submitted information must be released to the requestor pursuant to article 2.29.² However, in the event that the requestor is not acting as the victim's authorized representative, then the submitted information is not subject to article 2.29 of the Code of Criminal Procedure and we will address your arguments against disclosure of the submitted information.

Section 552.108(a)(1) 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 claiming section 552.108 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 the submitted information relates to a pending criminal investigation. Based on your representations and our review, we determine the release of the submitted 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, we find section 552.108(a)(1) is applicable to the submitted information.

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 information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88. Thus, with the exception of basic information, the department may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code.³

In summary, if the requestor is acting as the victim's authorized representative, then the department must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code; the remaining submitted information must be released to the requestor pursuant to article 2.29 of the Code of Criminal Procedure. However, if the requestor is not the authorized representative of the victim, then, with the exception of basic

²We note the submitted information contains private information of the victim to which the requestor in this instance would have a right of access. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles).

³As our ruling under section 552.108 is dispositive, we need not address your remaining argument against disclosure, except to note that basic information may generally not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

information, the submitted information may be withheld under section 552.108 of the Government Code.⁴

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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 374051

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴In either case, we note that the information to be released includes a social security number. 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. Gov't Code § 552.147(b).