



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2010

Mr. Floyd M. Akers
City Attorney
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691-0679

OR2010-05562

Dear Mr. Akers:

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# 381718.

The Pflugerville Police Department (the "department") received a request for information relating to two specified case numbers. You claim that some of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We first note that the information at issue is related to 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 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 Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

The submitted information involves an alleged violation of section 32.51 of the Penal Code that occurred on or after September 1, 2005. Thus, article 2.29 of the Code of Criminal Procedure may be applicable in this instance. If article 2.29 is applicable to the submitted information, then the information must be released to this requestor, except to the extent that it is confidential. Although you seek to withhold the information at issue under section 552.108 of the Government Code, the exceptions to disclosure found in the Act are generally not applicable to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the information at issue may not be withheld under section 552.108 if it is subject to article 2.29.

Although article 2.29 may be applicable in this instance, we are unable to determine whether this request for the submitted information was made on behalf of the crime victim. Therefore, we must rule in the alternative. Thus, if this request was made on behalf of the crime victim, then the submitted information must be released to this requestor in its entirety pursuant to article 2.29 of the Code of Criminal Procedure. But if this request was not made on behalf of the victim, then article 2.29 is not applicable in this instance. In that event, we will address your claim under section 552.108.

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 a pending criminal investigation. Based on your representation, we conclude that section 552.108(a)(1) is generally applicable to the information at issue. *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).

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

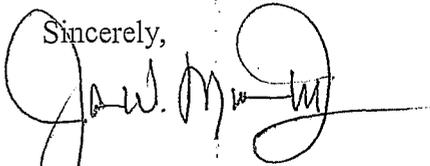
report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The remaining information may be withheld under section 552.108(a)(1).

In summary: (1) if this request for information was made on behalf of the crime victim, then the submitted information must be released to this requestor in its entirety pursuant to article 2.29 of the Code of Criminal Procedure; but (2) if the request was not made on behalf of the crime victim, then the information may be withheld under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c).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.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 381718

Enc: Submitted documents

c: Requestor
(w/o enclosures)

¹We note that the submitted documents contain the crime victim's Texas driver's license number, credit card account numbers, and social security number. If this request for information was made on the victim's behalf, then the requestor has a right of access to his driver's license, credit card and social security numbers. See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).