



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2010

Mr. Jose Hernandez
Records Clerk
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2010-08076

Dear Mr. Hernandez:

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# 387005 (Edinburg Reference number 9978).

The Edinburg Police Department (the "department") received a request for information pertaining three specified case numbers. You state the department has released basic information. *See* Gov't Code § 552.108(c) (basic information about an arrested person, an arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim that the submitted information is excepted from disclosure under sections 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that report number 2010-13244 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). 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:

(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, report number 2010-13244 pertains to a credit card abuse investigation, which constitutes an alleged violation of section 32.51. In this instance, the requestor is the victim of the alleged identity theft listed in the report, and the alleged offense occurred after September 1, 2005. Therefore, report number 2010-13244 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 portions of report number 2010-13244 are 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, no portion of report number 2010-13244 may be withheld under section 552.108 of the Government Code. Report number 2010-13244 must be released to this requestor.¹

Next, we will address your claim under section 552.108 of the Government Code for the remaining reports. 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

¹We note that some of the information that must be released from report number 2010-13244 would be confidential with respect to the general public. In this instance, however, the requestor has a special right of access to that information. *See* Gov't Code § 552.023(a). Further, 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 without the necessity of requesting an attorney general decision, including a Texas driver's license number under section 552.130 of the Government Code and a bank account number under section 552.136 of the Government Code. Thus, if the department receives another request for this same report from a person other than one with a right of access under section 552.023, the department is authorized to withhold this requestor's Texas driver's license under section 552.130 and her bank account number under section 552.136 without the necessity of requesting an attorney general decision.

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 information you have marked in the remaining reports relate to pending criminal investigations. Based on this representation, we conclude that the release of the information you have marked in the remaining reports 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). Therefore, the department may withhold the information you marked in the remaining reports under section 552.108(a)(1) of the Government Code.²

Next, you raise section 552.130 of the Government Code for the information you have marked in the remaining information. Section 552.130 provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). We note that section 552.130 protects personal privacy. In this instance, the requestor has a right of access under section 552.023 to her own Texas motor vehicle information and it may not be withheld from her pursuant to section 552.130. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles). However, upon review, the department must withhold the Texas motor vehicle record information not pertaining to the requestor, which we have marked in report number 2010-14005, under section 552.130 of the Government Code.³

In summary, the department must release report number 2010-13244 to this requestor. The department may withhold the information you have marked in the remaining reports under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle record information we have marked in report number 2010-14005 under section 552.130 of the Government Code. The remaining information must be released to this requestor.

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.

²As our ruling is dispositive for this information, we need not address your remaining arguments against the disclosure of portions of this information.

³As we previously noted, 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 under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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_ori.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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 387005

Enc. Submitted documents

c: Requestor
(w/o enclosures)