



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2010

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

OR2010-13041

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# 397036.

The Baytown Police Department (the "department") received a request for the investigative file of a forgery. You claim the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted file involves 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). 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, the submitted report involves an alleged forgery, which constitutes a violation of section 32.51 of the Penal Code. The requestor in this instance is the victim listed in the report and the alleged offense occurred after September 1, 2005. Accordingly, the submitted information is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor except to the extent it contains confidential information. You seek to withhold the report under section 552.108 of the Government Code; however, section 552.108 does not make information confidential. *See* Open Records Decision No. 177 (1977) (government body may waive statutory predecessor to section 552.108). Furthermore, the general 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). Therefore, section 552.108 is not applicable to the submitted information and it may not be withheld on that basis.¹

You seek to withhold additional portions of the report under sections 552.130 and 552.147 of the Government Code. Section 552.130 does make information confidential and excepts from public disclosure information that relates to a Texas driver's license. Gov't Code § 552.130(a)(1).² Accordingly, the department must withhold the Texas driver license number you marked.

¹We note because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

²*See* Open Records Decision No. 684 (2009) (encouraging prompt release of requested public information by clearly identifying certain types of information, such as Texas driver's license numbers protected by section 552.130, that governmental bodies may withhold without delay of requesting attorney general decision).

Section 552.147(a) of the Government Code states, “[t]he social security number of a living person is excepted from the requirements of Section 552.021, but is not confidential under this section and this section does not make the social security number of a living person confidential under another provision of this chapter or other law.” *Id.* 552.147(a). Because section 552.147(a) does not make social security numbers confidential, the department may not withhold the partial social security numbers you marked.

In summary, the department must withhold the Texas driver’s license number under section 552.130(a)(1) of the Government Code and release the rest of the report.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 397036

Enc. Submitted documents

c: Requestor
(w/o enclosures)