



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2011

Mr. Art Pertile, III
For City of Stafford
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2011-10318

Dear Mr. Pertile:

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# 427222 (COS11-028).

The City of Stafford (the "city"), which you represent, received a request for records related to a specified case. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The submitted information 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 . . . 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 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 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.

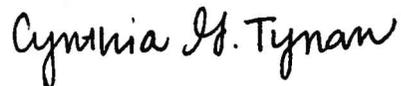
The submitted report pertains to credit card fraud, which constitutes an alleged violation of section 32.51. The requestor in this instance is the victim listed in the report, and the alleged offense occurred after September 1, 2005. Accordingly, the submitted report is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor except to the extent it contains confidential information. The city seeks to withhold the report under section 552.108 of the Government Code. However, section 552.108 does not make information confidential by law. Additionally, general exceptions in the Act generally cannot impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the submitted report may not be withheld under section 552.108 of the Government Code. Instead, the submitted report must be released to this requestor in its entirety pursuant to article 2.29 of the Code of Criminal Procedure.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.

¹We note the report contains information to which the requestor has a right of access. *See* Gov't Code § 552.023. Because such information may be confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/sdk

Ref: ID# 427222

Enc. Submitted documents

c: Requestor
(w/o enclosures)