



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2011

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2011-14826

Dear Mr. Ohnemiller:

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# 433358.

The Midland Police Department (the "department") received a request for a specified incident report. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 debit 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. You seek to withhold the report 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 the submitted information may be withheld under section 552.108 of the Government Code. You also assert the report is confidential pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. As this exception is a confidentiality provision, we will address its applicability.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses confidentiality provisions such as section 58.007 of the Family Code. The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). The submitted information pertains to alleged juvenile delinquent conduct that occurred after September 1, 1997. *See id.* §§ 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007), .02 (defining “child” for purposes of Fam. Code § 58.007(c)). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Accordingly, we conclude the submitted report is generally confidential under section 58.007.

As previously noted, however, article 2.29(b) of the Code of Criminal Procedure provides the requestor with a right of access to the report. But article 2.29(b) also states “[i]n 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(b) (emphasis added). Accordingly, the department is authorized by article 2.29(b) to withhold most of the submitted report pursuant to section 58.007(c) of the Family Code as confidential information. However, because article 2.29(b) provides the requestor with a right of access to the information described in article 2.29(a), which is also subject to section 58.007(c), there is a conflict between the provisions of section 58.007(c) and article 2.29(b) with regard to the information described by article 2.29(a). Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision, unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See Gov’t Code § 311.026(b); City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.).

In this instance, although section 58.007(c) of the Family Code generally makes juvenile law enforcement records confidential, article 2.29(b) of the Code of Criminal Procedure specifically requires release of particular information in a report alleging a violation of section 32.51 of the Penal Code to the victim listed in the report. *See* Crim. Proc. Code art. 2.29; Fam. Code § 58.007. In addition, article 2.29 was enacted in a later legislative session than section 58.007(c). *See* Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(a), 2005 Tex. Gen. Laws 885 (enacting article 2.29 of the Code of Criminal Procedure); Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 53, 100, 106, 1995 Tex. Gen. Laws 2517

(enacting section 58.007(c) of the Family Code). Therefore, notwithstanding the provisions of section 58.007(c), the department must release the information listed in article 2.29(a) to the requestor pursuant to article 2.29(b).¹ The remaining information in the report must be withheld under section 552.101 in conjunction with section 58.007(c).

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 433358

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.