



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2011

Ms. Donna L. Johnson
Olson & Olson LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2011-17661

Dear Ms. Johnson:

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# 442813.

The City of Cleveland (the "city"), which you represent, received a request for information related to a specified case number. You claim the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We note the submitted information 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.

In this instance, the submitted report involves identity theft, and the requestor is listed as the crime victim. Moreover, the report is related to an offense that occurred after September 1, 2005. Thus, 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 sections 552.103 and 552.108 of the Government Code. As a general rule, however, the exceptions to disclosure found in the Act do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, sections 552.103 and 552.108 are not applicable to the submitted report. In this instance, however, some of the submitted information is subject to section 552.130 of the Government Code, which is a confidentiality provision.¹ Accordingly, we will address section 552.130.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue a personal identification document. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The city must withhold the driver's license and personal identification numbers we have marked under section 552.130 of the Government Code. The rest of the submitted information must be released to this requestor pursuant to article 2.29 of the Code of Criminal Procedure.²

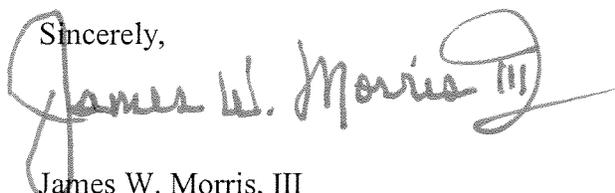
¹This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

²We note some of the remaining information falls within the scope of sections 552.130, 552.136, and 552.147 of the Government Code. Because the information in question pertains to the requestor, and sections 552.130, 552.136, and 552.147 protect personal privacy, the requestor has a right of access under section 552.023 of the Government Code to her own private information. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Should the city receive another request for the submitted information from a different requestor, the city should resubmit this information and request another decision. *See* Gov't Code §§ 552.301(a), .302.

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,

A handwritten signature in cursive script that reads "James W. Morris III". The signature is written in dark ink and includes a stylized flourish at the end.

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

JWM/em

Ref: ID# 442813

Enc: Submitted documents

c: Requestor
(w/o enclosures)