



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2012

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2012-02177

Dear Ms. Pemberton:

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# 445497 (ID # W006898).

The City of Killeen (the "city") received a request for information pertaining to a specified case number. You state you have released some of the requested information. You claim that 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 representative sample of information.¹

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 . . . identifying information of another person without the other person's consent[.]" Penal Code § 32.51(b)(1).

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 information pertains to an alleged forgery, which constitutes a 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 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. The city seeks to withhold the submitted information 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 information may not be withheld under section 552.108 of the Government Code. However, we note portions of the submitted information are subject to sections 552.136

and 552.137 of the Government Code.² As sections 552.136 and 552.137 are confidentiality provisions, we will address the applicability of these provisions to the submitted information.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). Accordingly, the city must withhold the bank account and routing numbers we have marked pursuant to section 552.136 of the Government Code.

Section 552.137 of the Government Code states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c). Therefore, the city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless its owner affirmatively consents to its disclosure.³

In summary, the city must withhold the bank account and routing numbers we have marked pursuant to section 552.136 of the Government Code and the personal e-mail address we have marked under section 552.137 of the Government Code, unless its owner affirmatively consents to its disclosure. The remaining information must be released to the requestor.⁴

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,

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note that, because this requestor has a special right of access to the information being released, the city must again ask this office for a decision if it receives another request for this information from a different requestor.

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 black ink, appearing to read "Sarah Casterline". The signature is fluid and cursive, with the first name "Sarah" and the last name "Casterline" clearly distinguishable.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 445497

Enc. Submitted documents

c: Requestor
(w/o enclosures)