



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2012

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2012-07610

Dear Mr. Mann:

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# 455179 (GCA 12-0215).

The Garland Police Department (the "department") received a request for police report number 2012R003494. You state the department has released some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note 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 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." *See* Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, the requestor is a victim of the identity theft listed in the information, and the alleged offense occurred after September 1, 2005. Therefore, 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. *See id.* You claim portions of the submitted information are excepted from disclosure 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, none of the submitted information may be withheld under section 552.108 of the Government Code.

You also raise section 552.130 of the Government Code for portions of the submitted information. As this section is a confidentiality provision, we will address its applicability to the submitted information. Section 552.130(a)(2) excepts from disclosure information related to "a motor vehicle title or registration issued by an agency of this state or another state or country[.]" Gov't Code § 552.130(a)(2). Upon review, we agree the department must withhold the motor vehicle information you have marked, as well as the Texas license plate number we have marked, under section 552.130(a)(2) of the Government Code.¹ As you raise no other exceptions to disclosure, the department must release the remaining information to the requestor pursuant to article 2.29 of the Code of Criminal Procedure.

¹We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an Texas driver's license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 455179

Enc. Submitted documents

c: Requestor
(w/o enclosures)