



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 18, 2019

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

OR2019-32421

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# 797158 (PIR No. GCA19-0801).

The Garland Police Department (the "department") received a request for all reports involving the requestor's name. You state you are releasing some information to this requestor. You also state you will redact the dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2017-22182 (2017).<sup>1</sup> You claim 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.

We note the submitted information involves an alleged violation of section 32.51 of the Penal Code, which provides, "[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 telecommunication identifying information or access device. *Id.* § 32.51(a)(1)(A), (D). 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:

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<sup>1</sup> Open Records Letter No. 2017-22182 authorizes the department to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general decision.

(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 Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, the submitted information pertains to reports of fraudulent use of identifying information, which constitutes an alleged violation of section 32.51. We note the requestor is the victim of the alleged identity theft listed in the reports, and the alleged offense occurred after September 1, 2005. Therefore, the submitted reports are subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor. *See* Crim. Proc. Code art. 2.29. Although you seek to withhold the reports under section 552.108 of the Government Code, this exception 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, the submitted reports may not be withheld under section 552.108 of the Government Code. However, as section 552.130 of the Government Code makes information confidential, we will address the applicability of this section to the information subject to article 2.29.<sup>2</sup>

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department must release the remaining information.

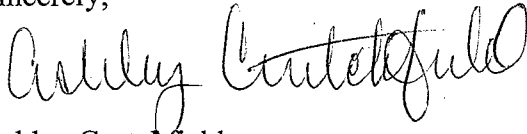
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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Ashley Crutchfield". The signature is written in a cursive, flowing style.

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/gw

Ref: ID# 797158

Enc. Submitted documents

c: Requestor  
(w/o enclosures)