



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 27, 2022

Ms. Amanda K. Davis  
Counsel for the City of McKinney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2022-29822

Dear Ms. Davis:

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# 974473 (ORR# P023798).

The City of McKinney (the "city"), which you represent, received a request for a specified incident report. The city claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

The submitted information concerns an alleged violation of section 32.51 of the Penal Code. Section 32.51(b)(1) 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 or effective consent[.]" Penal Code § 32.51(b). 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 Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885. The requestor is the victim and the alleged offense occurred after September 1, 2005. Therefore, the information at issue is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor, except to the extent the information is confidential. Crim. Proc. Code art. 2.29(b). Section 552.108 of the Government Code 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). Thus, the city may not withhold the information at issue from this requestor under section 552.108 of the Government Code. However, because section 552.136 of the Government Code is a confidentiality provision, we will address its applicability to this information.<sup>1</sup>

Section 552.136(b) of the Government Code provides, "[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). The city must withhold the submitted account numbers under section 552.136 of the Government Code.

The city asserts the remaining information is excepted from disclosure under section 552.108(a) of the Government Code, which excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The city states the remaining information, which we have marked, relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See*

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

*Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold the submitted account numbers under section 552.136 of the Government Code. The city may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The city must release the submitted information.<sup>2</sup>

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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jxd

Ref: ID# 974473

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> Because the requestor has a special right of access to some of the information being released, the city must again seek a decision from this office if it receives a request for the same information from another requestor.