



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 28, 2006

Ms. Dana W. Cooley  
District Attorney  
132<sup>nd</sup> Judicial District  
1806 25<sup>th</sup> Street, Suite 302  
Snyder, Texas 79549-2530

OR2006-09945

Dear Ms. Cooley:

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# 258941.

The 132<sup>nd</sup> Judicial District Attorney's Office (the "district attorney's office") received a request for information pertaining to three specified cause numbers. You state that most of the requested information, including basic information, will be released to the requestor. *See* Gov't Code § 552.108(c); *see also* Open Records Decision No. 127 (1976) (summarizing types of basic information). You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information 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 (Tex. 1977).

In this instance, you state that the information at issue relates to three criminal charges, two of which the listed defendant was convicted of. You state that the third charge was dismissed. You contend that "[a]lthough the cases against [the defendant] have concluded,

the possible involvement of others who have not yet been indicted for” various crimes is being investigated. You state that the information at issue pertains to that ongoing criminal investigation. Based upon your representations and our review, we find that section 552.108(a)(1) is applicable in this instance. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e., 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Therefore, with the exception of basic information, which you state will be released, the district attorney's office may withhold the information at issue, which we have marked, under section 552.108(a)(1).

We note that some of the remaining records contain information that is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.<sup>1</sup> Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses chapter 560 of the Government Code. Fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the Government Code, which provide:

Sec. 560.001. DEFINITIONS. In this chapter

(1) “Biometric identifier” means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(2) “Governmental body” has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions like sections 552.101, 552.130, and 552.147 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001-.003. Thus, pursuant to section 552.101 in conjunction with section 560.003, the department must withhold the fingerprint information we have marked unless section 560.002 permits its disclosure.

Section 552.130(a)(1) of the Government Code requires a governmental body to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." We have reviewed the records at issue and marked the Texas motor vehicle record information that must be withheld under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Pursuant to section 552.147, the social security number we have marked must be withheld.<sup>2</sup>

In summary, the district attorney's office must withhold the information we have marked under sections 552.101, 552.130, and 552.147 of the Government Code. With the exception of basic information, which you state will be released, the district attorney's office may withhold the information we have marked under section 552.108 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

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<sup>2</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/dh

Ref: ID# 258941

Enc. Submitted documents

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