



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2007

Mr. Asem Eltiar
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2007-04957

Dear Mr. Eltiar:

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# 280909.

The Arlington Police Department (the "department") received a request for copies of fingerprints related to a specified incident. You claim that the requested information is exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have submitted information that is not responsive to the request. The Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Therefore, these documents, which we have marked, are not responsive to the present request. This ruling does not address the non-responsive documents.

Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. See Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric

identifiers must be maintained and circumstances in which they can be released), 560.003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). It does not appear to this office that section 560.002 permits the disclosure of the submitted fingerprint information to the requestor. Therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

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 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 280909

Enc. Submitted documents

c: Mr. Richard Statkin
Investigation Resource Service
P.O. Box 121963
Fort Worth, Texas 76121-1963
(w/o enclosures)