



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 26, 2008

Ms. Teresa J. Brown  
Senior Open Records Assistant  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2008-08661

Dear Ms. Brown:

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# 314118.

The City of Plano (the "city") received a request for sex offender registration records pertaining to a named individual. You take no position with respect to the submitted information, but state that it may be excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses Chapter 62 of the Code of Criminal Procedure, which establishes a sex-offender-registration program under which persons with a "reportable conviction or adjudication" or who are "required to register as a condition of parole, release to mandatory supervision, or community supervision" must register "with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days[.]" Crim. Proc. Code art. 62.051(a). Article 62.051(c)

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<sup>1</sup>While you raise section 552.108 of the Government Code, we note that section 552.101 of the Government Code is the proper exception in this instance as it encompasses information protected by other statutes.

requires a sex offender registrant to provide the Department of Public Safety ("DPS") with certain enumerated categories of information. *See id.* art. 62.051(c). Article 62.005 states that this information is public information, with the exception of the person's social security number, driver's license number, telephone number, all information required by the department outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *Id.* art. 62.005(b). In this instance, the submitted information consists of sex offender registration records. You state, however, that the individual to whom the records pertain was not required to register as a sex offender in the state of Texas. Based on your representations and our review, we find article 62.005 of the Code of Criminal Procedure is not applicable to the submitted information.

We note, however, that the submitted documents contain fingerprint information. Section 552.101 also encompasses sections 560.001, 560.002, and 560.003 of the Government Code. These sections govern the public availability of fingerprint information and provide as follows:

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
  - (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, 560.002, 560.003. You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the city must withhold the fingerprint information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

The submitted documents also contain information subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). We note that section 552.130 does not apply to out-of-state motor vehicle record information. Accordingly, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the fingerprint information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code and the Texas motor vehicle record information we have marked pursuant to section 552.130. The remaining information must be released.<sup>3</sup>

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>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).

<sup>3</sup>We note that the remaining information contains a social security number. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Jordan Hale  
Assistant Attorney General  
Open Records Division

JH/jb

Ref: ID# 314118

Enc. Submitted documents

c: Ms. Laura Swedburg  
03578 53<sup>rd</sup> Street  
Grand Junction, Michigan 49056  
(w/o enclosures)