



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2009

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2009-06303

Dear Ms. Graham:

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# 346985.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified incident. You state you will release some information to the requestor, but claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted documents contain court records signed by a magistrate. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). Sections 552.103 and 552.108 of the Government Code are discretionary exceptions that protect a governmental body's interests and are therefore not "other law" that makes court records confidential for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Thus, the court records in the submitted information may not be withheld pursuant to section 552.103 or section 552.108. However, we note that the documents subject to section 552.022(a)(17) contain information that is excepted from disclosure under sections 552.101 and 552.130 of the Government Code, which are considered other law for purposes of section 552.022.¹

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). 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 department must withhold the fingerprints in the submitted court records pursuant to section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130(a)(1)-(2). Thus, the department must withhold the Texas motor vehicle record information we have marked in the submitted court records under section 552.130. The remainder of the court records must be released.

We next address your claim under section 552.108 with respect to the remaining submitted information. Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information relates to a pending criminal case. Based on your representations and our review, we determine that the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which

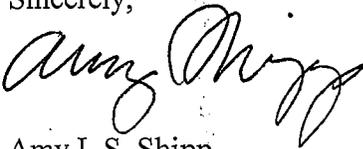
you state you have released, you may withhold the remaining information from disclosure pursuant to section 552.108(a)(1).²

In summary, the department must withhold the fingerprint information in the submitted court records pursuant to section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The department must withhold the Texas motor vehicle record information we have marked in the submitted court records under section 552.130 of the Government Code. The remainder of the court records must be released. With the exception of basic information, the department may withhold the remaining information pursuant to section 552.108(a)(1) of the Government Code.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jb

Ref: ID# 346985

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²As our ruling on this issue is dispositive, we do not address your remaining claimed exception to disclosure, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597 (1991).