



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2009-06874

Dear Ms. Sandoval-Walker:

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# 344175.

The El Paso Police Department (the "department") received a request for several categories of information, including video and audio recordings, pertaining to a specified incident and four specified case numbers. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted information pertaining to case number 08-159293 for our review, and have not submitted any video or audio recordings. To the extent any additional responsive information existed on the date the department received this request, we assume you have released it to the requestor. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information contains court-filed documents. Section 552.022(a)(17) of the Government Code provides for the required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. *See* Gov't Code § 552.022(a)(17). You claim the court-filed documents are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a

governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). See Open Records Decision No. 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the department may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. As you raise no further exceptions to the disclosure of this information, it must be released.

Next, we note the remaining information contains the requestor's fingerprints. 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. This exception encompasses information other statutes make confidential, such as section 560.003 of the Government Code, which provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; see *id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, the requestor has a right of access to his own fingerprints under section 560.002(1)(A). See Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, the department must release the marked fingerprints under section 560.002 of the Government Code. See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

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." Gov't Code § 552.108(a)(1). 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), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You acknowledge that the case against one of the offenders named in the submitted information has been dismissed. However, you assert that the submitted information also relates to a pending criminal investigation and prosecution against the other named offender. You further state that release of the information at issue would interfere with the detection, investigation, and prosecution of a crime. Based upon this representation, we conclude that section 552.108(a)(1) is applicable to the remaining information. 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).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 185-86. Thus,

with the exception of the basic front page offense and arrest information, you may withhold the remaining information pursuant to section 552.108(a)(1) of the Government Code.¹

Basic information contains the arrestees' social security numbers. Section 552.147 of the Government Code states that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.² Gov't Code § 552.147. However, the requestor has a right of access to his own social security number pursuant to section 552.023 of the Government Code. *Id.* § 552.023. Upon review, we agree the department may withhold the social security numbers you have marked under section 552.147 of the Government Code.

In summary, the department must release the information subject to section 552.022(a)(17) of the Government Code. The department must also release the marked fingerprints under section 560.002 of the Government Code. Except for basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing basic information, the department may withhold the social security numbers you have marked under section 552.147 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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

²Section 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. *See* Gov't Code § 552.147(b).

Ref: ID# 344175

Enc. Submitted documents

c: Requestor
(w/o enclosures)