



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2010

Ms. Josefina J. Brostrom
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio Room 503
El Paso, Texas 79901

OR2010-04464

Dear Ms. Brostrom:

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# 379308.

The El Paso County Sheriff's Office (the "sheriff") received a request for information relating to a specified case number. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note that the submitted information includes the requestor's fingerprints. Section 560.003 of the Government Code provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 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 of the Government Code 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 fingerprints we have marked must be released to this requestor pursuant to section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

We also note that the submitted information includes court documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). We have marked the

documents that are subject to section 552.022(a)(17). Although you seek to withhold the court documents under sections 552.103 and 552.108 of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See id.* § 552.007; *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App. – Dallas 1999, no pet.) (Gov't Code § 552.103 may be waived); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, sections 552.103 and 552.108 are not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the marked court documents may not be withheld under section 552.103 or section 552.108 and must be released pursuant to section 552.022(a)(17).

You claim that the remaining information is excepted from disclosure under section 552.108. Section 552.108(a)(1) excepts “[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). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and have provided a letter from an assistant district attorney for the 34th Judicial District asserting, that the release of the remaining information at issue would interfere with a pending criminal prosecution. Based on your representations and the assistant district attorney's letter, we conclude that section 552.108(a)(1) is generally 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).

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The sheriff must release basic offense and arrest information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report.¹ *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The sheriff may withhold the remaining information under section 552.108(a)(1).

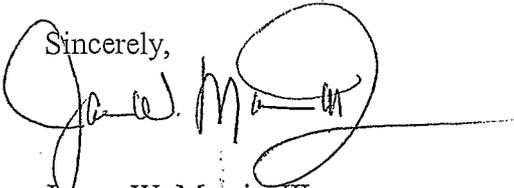
¹We note that the submitted information includes the arrested person's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to his own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

In summary: (1) the marked fingerprints must be released to this requestor pursuant to section 560.002(1)(A) of the Government Code; (2) the marked court documents must be released pursuant to section 552.022(a)(17) of the Government Code; and (3) the sheriff may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c).² As we are able to make these determinations, we need not address your other arguments against disclosure.³

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, toll free, at (888) 672-6787.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 379308

Enc: Submitted documents

c: Requestor
(w/o enclosures)

²Should the sheriff receive another request for this same information from a person who would not have a right of access to this requestor's fingerprints, the sheriff should resubmit this information and request another ruling. See Gov't Code §§ 552.301, .302.

³We note that section 552.103 of the Government Code does not generally except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).