



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 12, 2010

Ms. Molly Shortall  
Assistant City Attorney  
City of Arlington  
P.O. Box 90231  
Arlington, Texas 76004-3231

OR2010-05126

Dear Ms. Shortall:

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# 376281.

The Arlington Police Department (the "department") received a request for all internal affairs records pertaining to two named department officers. You state that information related to closed internal affairs investigations has been released to the requestor, but claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that section 552.022 of the Government Code is applicable to some of the submitted information. Section 552.022(a)(17) 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 a court document that is subject to section 552.022(a)(17). Although you seek to withhold the court document under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; 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, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore,

the marked court document may not be withheld under section 552.108 of the Government Code. However, we note that the information subject to section 552.022 contains information that falls under sections 552.101 and 552.1175 of the Government Code. Sections 552.101 and 552.1175 are “other law” for purposes of section 552.022. Therefore, we will address the applicability of these exceptions to the court-filed document.

We note that the court-filed document contains 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.”<sup>1</sup> Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 560.003 of the Government Code. Section 560.003 provides that a governmental body may not release fingerprint information except in certain limited circumstances. *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 fingerprints at issue. Therefore, the department must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.<sup>2</sup>

Next, section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

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<sup>1</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and Texas driver’s license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). We have marked information that may be excepted from disclosure under section 552.1175. To the extent the individual whose information we have marked is a peace officer and elects to restrict access to the personal information in accordance with section 552.1175, the department must withhold the personal information we have marked under section 552.1175. *See, e.g.*, Open Records Decision No. 678 (2003). To the extent the individual at issue does not qualify as a peace officer or does not elect to keep this information confidential, it may not be withheld on this basis and must be released.

We next address your claim under section 552.108 of the Government Code for the remaining information not subject to section 552.022. Section 552.108(a)(1) 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 . . . 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(a)(1) 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). The remaining information consists of an internal affairs investigation. Section 552.108 is generally not applicable to records of an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (addressing statutory predecessor to section 552.108). However, you state that the remaining information also relates to a criminal investigation conducted by the department which has been turned over to the Tarrant County District Attorney's Office for prosecution. You further state that release of the information at issue would interfere with the detection, investigation, and prosecution of crime.

Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation or prosecution. *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, the information at issue includes a statutory warning, which we have marked, that has previously been provided to the arrestee. Because a copy of this document has previously been released to the arrestee, we find you have not shown how release of this document will interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the statutory warning may not be withheld under section 552.108(a)(1). Because the remaining information at issue has not been previously released, and based on your representations and our review, we

find that the release of the remaining information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle*. Thus, section 552.108(a)(1) is generally applicable to the remaining information at issue.

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 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the statutory warning and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

We note that a portion of the statutory warning is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). Thus, the department must withhold the Texas driver's license number we have marked in the statutory warning under section 552.130 of the Government Code.

In summary, the department 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. To the extent the individual whose information we have marked is a peace officer and elects to restrict access to the personal information in accordance with section 552.1175, the department must withhold the personal information we have marked under section 552.1175. To the extent the individual at issue does not qualify as a peace officer or does not elect to keep this information confidential, it may not be withheld on this basis and must be released. With the exception of the statutory warning and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. The department must withhold the Texas

driver's license number we have marked in the statutory warning under section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 376281

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the basic information includes the arrestee'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. Gov't Code § 552.147.