



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2010

Ms. Claire Yancey
Assistant District Attorney
Denton County
P.O. Box 2850
Denton, Texas 76202

OR2010-07950

Dear Ms. Yancey:

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# 381295.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for all reports and witness statements filed by two named victims in relation to two burglary charges against a named individual and all reports, documents, statements, and information in the district attorney's possession pertaining to the burglary charges, cause numbers F-2009-2305-A and F-2009-2306-A. You claim the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note portions of the submitted information are subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). In this instance, the submitted information includes documents filed with a court. This information is expressly public under section

552.022(a)(17) and the district attorney must release it unless it is confidential under other law. You raise section 552.108 of the Government Code for this information. However, section 552.108 is a discretionary exception to disclosure that protects the governmental body's interests and does not qualify as "other law" for the purposes of section 552.022. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Accordingly, the district attorney may not withhold the court-filed documents, which we have marked, under section 552.108. However, we note the information subject to section 552.022 contains information subject to section 552.101 of the Government Code. Section 552.101 constitutes "other law" for purposes of section 552.022. Therefore, we will address the applicability of this exception to the court-filed documents.¹

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 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.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). However, section 560.002 provides "[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). Accordingly, we find a person, or the person's authorized representative, has a right of access under subsection 560.002(1)(A) to that person's biometric information. In this instance, the requestor may be an authorized representative of the individual whose fingerprint appears in the court-filed documents. Thus, if the district attorney determines the requestor is the authorized representative of the individual whose fingerprint is at issue, the requestor has a right of access to the fingerprint we have marked under subsection 560.002(1)(A) and it must be released. If, however, the district attorney determines the requestor is not the authorized representative of the individual whose fingerprint is at issue, the district attorney must withhold the marked fingerprint under section 552.101 in conjunction with section 560.003.² The remaining information subject to subsection 552.022(a)(17) must be released.

Section 552.108 of the Government Code provides in relevant part:

¹Although section 552.130 of the Government Code also constitutes "other law" for purposes of section 552.022, upon review, none of the information subject to section 552.022 contains Texas motor vehicle record information.

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general decision.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Id. § 552.108(a)(4). 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).

In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993), held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. You assert, and we agree, the present request seeks the entire prosecution files of two criminal cases. Based on your representations and our review, we conclude section 552.108(a)(4) is generally applicable to the submitted information.

We note, 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 Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.³

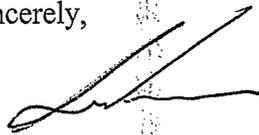
³As our ruling is dispositive, we need not address your remaining arguments against disclosure, except to note that although basic information includes an arrestee's social security number, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

In summary, if the district attorney determines the requestor is the authorized representative of the individual whose fingerprint is at issue, the district attorney must release the marked fingerprint under section 560.002 of the Government Code; otherwise, the district attorney must withhold the marked fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. With the exception of the remaining portions of the court-filed documents marked under section 552.022(a)(17) and basic information, the district attorney may withhold the remaining information under section 552.108(a)(4) 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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 381295

Enc. Submitted documents

c: Requestor
(w/o enclosures)