



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2010

Ms. Laura Garza Jimenez
Nueces County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2010-10515

Dear Ms. Jimenez:

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# 386787.

The Nueces County Sheriff's Department and the Nueces County Judge (collectively, the "county") received a request for six categories of information pertaining to a named inmate and jailer. You state you do not have information responsive to the second category of requested information.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state a portion of the submitted information was used or developed in an investigation of an alleged injury to a child. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Thus, we find the information you have marked is within the scope of section 261.201. You have not indicated the county’s police department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. It does not appear any of the exceptions in section 261.201 apply. Given that assumption, we conclude the marked information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the submitted information contains the fingerprints of the requestor’s client, including a document that is generally confidential under section 261.201. Fingerprints are governed by chapter 560 of the Government Code, which is also encompassed by section 552.101. Section 560.001(1) provides that “[b]iometric identifier” means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.” Gov’t Code § 560.001(1). Under section 560.003 of the Government Code, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003. Section 560.002 states, 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). Accordingly, we find a person, or the person’s authorized representative, has a right of access under section 560.002(1)(A) to that person’s biometric information. Thus, the requestor has a right of access to his client’s 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).

Although one of the documents containing the requestor’s client’s fingerprints is generally confidential under section 261.201 of the Family Code, section 560.002 of the Government Code provides the requestor with a right of access to his client’s fingerprints. Therefore, in this instance, there is a conflict between the confidentiality provision of section 261.201 and

the right of access provision of section 560.002. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision, unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 261.201 generally makes records of alleged child abuse confidential, section 560.002 specifically permits release of fingerprints to certain parties. We, therefore, conclude the marked fingerprints in the document at issue may not be withheld from this requestor under section 261.201. Likewise, exceptions in the Act cannot impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1993); *see also* 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Consequently, the fingerprints in the document at issue, as well as within the remaining information, may not be withheld from this requestor under section 552.103 or section 552.108 of the Government Code, which you also raise as exceptions to disclosure. Thus, the county must release the marked fingerprints to this requestor under section 560.002 of the Government Code. The remaining information you seek to withhold under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code must be withheld on that basis.²

You raise section 552.108 for the remaining information. 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). You assert, and provide an affidavit from the Nueces County District Attorney's Office stating, the remaining information relates to a pending criminal prosecution. Based upon these representations and our review, we conclude the release of the information at issue 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). Thus, section 552.108(a)(1) is applicable to the remaining information at issue.

However, 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 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed

²As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

public by *Houston Chronicle*). Thus, with the exception of basic information, the county may withhold the remaining information under section 552.108(a)(1).³

In summary, the county must release the fingerprint information you have marked pursuant to section 560.002 of the Government Code. With the exception of the requestor's client's fingerprints, the county must withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the county may withhold the remaining information under 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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 386787

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive for the information subject to section 552.108(a)(1) of the Government Code, we do not address your remaining claims against disclosure, except to note the basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code.