



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 29, 2010

Mr. B. Chase Griffith  
Brown & Hofmeister, LLP  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2010-17773

Dear Mr. Griffith:

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# 402360 (Flower Mound Public Information Request #948).

The City of Flower Mound (the "city"), which you represent, received a request for all information pertaining to incident number 10-046528. You state that some responsive information has already been released to the requestor. You claim that the remaining requested 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.

First, we note 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 a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry"). However, section 560.002 of the Government Code provides 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 is entitled to his own fingerprints 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 the submitted information includes a court-filed document. Section 552.022(a)(17) of the Government Code requires 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). Although you seek to withhold this document under section 552.108, that section is a discretionary exception to disclosure that protects only the governmental body’s interests and may be waived. *See id.* § 552.007; Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 is not considered “other law” that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the marked court-filed document may not be withheld under section 552.108. As you raise no other exceptions against disclosure of this information, it must be released.

Next, as to the remaining information, we address your claim under section 552.108(a)(1) of the Government Code. That section provides, in pertinent part:

(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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the remaining information includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The department provided copies of these forms to the arrestee at the time of arrest. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108(a)(1). You state that the remaining information at issue relates to a case that is open and pending. Based on your representation and our review, we conclude that release of the remaining 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 per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we agree that section 552.108(a)(1) is applicable to the remaining information.

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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Record Decision No. 127 (1976) (summarizing types of

information considered to be basic information). Accordingly, with the exception of basic information, and the DIC-24 and DIC-25 forms, the department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.

In summary, the fingerprints must be released to this requestor pursuant to section 560.002(1)(A). The marked court-filed document must be released pursuant to section 552.022(a)(17). With the exception of the DIC-24 and DIC-25 forms and basic information, the department may withhold the remaining information under section 552.108(a)(1).

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: 402360

Enc. Submitted documents

c: Requestor  
(w/o enclosures)