



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 6, 2011

Ms. Claire E. Swann  
Abernathy, Roeder, Boyd & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2011-06273

Dear Ms. Swann:

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# 416763.

The Mansfield Independent School District (the "district"), which you represent, received a request for a specified arrest report pertaining to the requestor's son. You state the district has provided some of the requested information to the requestor. You claim the submitted arrest report and related records are excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. You also state, and provide documentation showing, the district notified interested parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the district will redact student-identifying information in the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. FERPA, however, is not applicable to law enforcement records maintained by the district's police department (the "department") that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The submitted arrest report and related records consist of law enforcement records prepared by the department. Thus, the submitted information is not subject to FERPA, and no portion of it may be withheld on that basis.

Next, as you acknowledge, the submitted information is subject to section 552.022 of the Government Code, which states, in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, 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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation. Pursuant to section 552.022(a)(1) of the Government Code, a completed investigation is expressly public unless it either is excepted from disclosure under section 552.108 of the Government Code or is expressly confidential under other law. You claim the submitted information is excepted under sections 552.108 and 552.135 of the Government Code. You also claim portions of the information are excepted under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The common-law informer's privilege is "other law" for the purpose of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *Tex. Comm'n on Env'tl. Quality v. Abbott*, No. GV-300417 (126th Dist. Ct., Travis County, Tex.). Because information subject to section 552.022(a)(1) may be withheld under sections 552.101, 552.108, and 552.135, we will consider the applicability of these exceptions to the submitted information.

We note the submitted information contains the requestor's son's 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." Gov't Code § 552.101. This exception encompasses information other statutes make confidential, such as section 560.003 of the Government Code, which provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 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 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). 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. In this instance, we are unable to determine whether or not the requestor is acting as her adult son's authorized representative. Thus, if the district determines the requestor is acting as her son's authorized representative, the requestor has a right of access to her son's fingerprints, which we have marked, under

section 560.002(1)(A). In that case, the district must release the marked fingerprints to this requestor under section 560.002 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). If, however, the district determines the requestor is not acting as her son's authorized representative, then she does not have a right of access to the marked fingerprints, and the district must withhold this information under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert the remaining information pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to the remaining information.

Section 552.108, however, 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 considered to be basic information). Although you assert the witnesses' identifying information should be withheld, we note basic information does not include witness-identifying information. Thus, with the exception of basic information, the district may withhold the remaining information under section 552.108(a)(2) of the Government Code.<sup>1</sup>

In summary, if the district determines the requestor is acting as her son's authorized representative, the district must release the marked fingerprints to this requestor under section 560.002 of the Government Code. If the district determines the requestor is not acting as her son's authorized representative, the district must withhold the marked fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. With the exception of basic information, the

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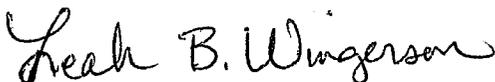
<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure for this information.

district may withhold the remaining information under section 552.108(a)(2) 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](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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/eeg

Ref: ID# 416763

Enc. Submitted documents

c: Requestor  
(w/o enclosures)