



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2011

Ms. Jennifer McClure
Assistant District Attorney
Denton County District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2011-07264

Dear Ms. McClure:

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# 418345.

The Denton County District Attorney's Office (the "district attorney") received a request for all information in the district attorney's file on a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130 and 552.147 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. This section encompasses information protected by other statutes. We note the submitted information includes a fingerprint that is subject to section 560.003 of the Government Code. Section 560.003 provides that "[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 of the Government Code 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). Although you seek to withhold the fingerprint at issue under section 552.108 of the Government Code, we note the requestor, as the authorized representative of the individual whose fingerprint is at issue, has a right of access to this information. *See id.* § 560.002(1). Thus the marked fingerprint must be released to the requestor. *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).*

You claim the remaining information is excepted under section 552.108 of the Government Code, which provides, in 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:

(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.

Gov't Code § 552.108(a)(4). 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.* §§ 552.108(a)(4), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Furthermore, in *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held 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, orig. proceeding), held "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 file of the criminal case at issue. Based on your representations and our review, we conclude section 552.108(a)(4) is applicable to the remaining 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*). We note that basic information described in *Houston Chronicle* does not include Texas motor vehicle record information subject to section 552.130 of the Government Code. 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.

We note the 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. Gov't Code § 552.147(b). However, in this instance, the requestor has a right of access to his client's social security number and it must be released to him. *See generally id.* § 552.023(b) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).

In summary, the district attorney must release the marked fingerprint to the requestor.¹ With the exception of basic information, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.²

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 418345

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Should the district attorney receive another request for this same information from a person who would not have a right of access to the requestor's client's fingerprint, the district attorney should resubmit this information and request another ruling. *See* Gov't Code §§ 552.301, .302.

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