



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 25, 2011

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

OR2011-07441

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# 423511 (PIR #1251).

The Town of Flower Mound (the "town"), which you represent, received a request for law enforcement records involving the requestor and a specified date. You state some of the requested information has been released. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We first note the submitted information includes the requestor's fingerprints. Section 560.003 of the Government Code provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]."<sup>1</sup> Gov't Code § 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

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<sup>1</sup>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.

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 fingerprints we have marked must be released to this requestor 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 court documents. Section 552.022(a)(17) of the Government Code provides for required public 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). Thus, the court documents we have marked are subject to section 552.022(a)(17). Although the town seeks to withhold the court documents under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for purposes of section 552.022(a)(17). Therefore, the marked court documents may not be withheld under section 552.108 and must be released pursuant to section 552.022(a)(17) of the Government Code.

Next, we address your claim under section 552.108 of the Government Code for the remaining information at issue. Section 552.108(a)(1) 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). 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). You state the remaining information is related to a pending criminal case. Based on your representation, we conclude section 552.108(a)(1) is generally applicable to the remaining information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note the remaining information includes a statutory warning and a notice of suspension. Because copies of those documents are provided to the person who is the subject of the warning and the notice, we find release of the statutory warning and the notice of suspension will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the statutory warning and the notice of suspension may not be withheld under section 552.108 and must be released.

We also note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 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 186-88. The town must release basic offense and arrest information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report.<sup>2</sup> See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Except for basic information, the statutory warning, and the notice of suspension, the town may withhold the remaining information under section 552.108(a)(1).

In summary, the town (1) must release the marked fingerprints pursuant to section 560.002 of the Government Code; (2) must release the marked court documents pursuant to section 552.022(a)(17) of the Government Code; (3) may withhold the remaining information under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c), the statutory warning, and the notice of suspension; and (4) must release the statutory warning and the notice of suspension.<sup>3</sup>

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

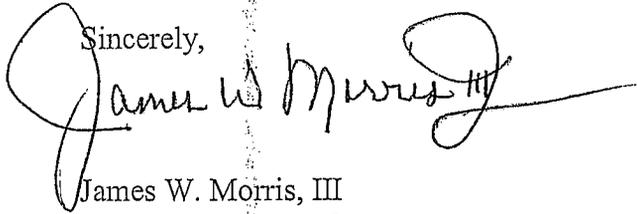
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<sup>2</sup>We note basic information includes an arrested person's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to her own social security number. See generally Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

<sup>3</sup>We note the statutory warning and the notice of suspension contain the requestor's Texas driver's license number, which the department would be required to withhold from the general public under section 552.130 of the Government Code. Because that exception protects personal privacy, the requestor has a right to her own driver's license number under section 552.023 of the Government Code. See Gov't Code § 552.023(a); ORD 481 at 4. We also note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and a Texas driver's license number under section 552.130 of the Government Code. Thus, should the town receive another request for these same records from a person who would not have a right of access to this requestor's private information, Open Records Decision No. 684 authorizes the town to withhold this requestor's fingerprints under section 552.101 and her Texas driver's license number under section 552.130 without the necessity of requesting another attorney general decision.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 423511

Enc: Submitted documents

c: Requestor  
(w/o enclosures)