



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2011

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2011-09436

Dear Ms. Lentz:

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# 423378.

The Williamson County Sheriff's Office (the "sheriff") received a request for information relating to four specified arrests involving a named individual. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We note you have not submitted any information responsive to the portions of the request that seek access to records of arrests in 1980 and 1993. Thus, we assume the sheriff has released information relating to those arrests, to the extent such information existed when the sheriff received the present request for information. If not, then the sheriff must release any such information immediately.¹ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

We also note the requestor does not seek access to any social security or Texas driver's license, license plate or vehicle identification numbers contained in the submitted information. Thus, those types of information are not responsive to the request, and we need

¹We note the Act does not require the sheriff to release information that did not exist when he received this request, create responsive information, or obtain information that is not held by the sheriff or on his behalf. 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), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

not address the sheriff's claim for Texas driver's license and motor vehicle information under section 552.130 of the Government Code.

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. 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]." *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). In this instance, the requestor is an attorney who may represent the individual whose fingerprints and palm prints are at issue. If so, then the fingerprints and palm prints you 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). If the requestor is not the individual's attorney, then the sheriff must withhold the marked fingerprints and palm prints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* The submitted information includes a crash report that was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). In this instance, the requestor has not provided the sheriff with two of the three specified items of information. Therefore, the sheriff must withhold the crash report you have marked from this requestor pursuant to section 550.065(b) of the Transportation Code.

Section 552.108 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). 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 have marked the information the sheriff seeks to withhold under section 552.108. You state release of the marked information would interfere with a pending criminal prosecution. You inform us the Williamson County District Attorney's Office has requested that the marked

information not be released. Based on your representations, we conclude section 552.108(a)(1) is generally applicable to the marked 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 information you seek to withhold under section 552.108 includes a statutory warning and a notice of suspension, which we have marked. 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 sheriff 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. *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 sheriff may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Lastly, section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Gov't Code* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We agree the credit card numbers you have marked fall within the scope of section 552.136. We note, however, this exception protects personal privacy. Therefore, the requestor has a right of access to the marked credit card numbers under section 552.023 of the Government Code if he represents the individual to whom the information pertains. *See Gov't Code* § 552.023; ORD 481 at 4.² In that event, the credit card numbers must be released. If the requestor is not the individual's representative, then the sheriff must withhold the credit card numbers under section 552.136 of the Government Code.³

²Section 552.023 provides in part that “[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.” *Gov't Code* § 552.023(a).

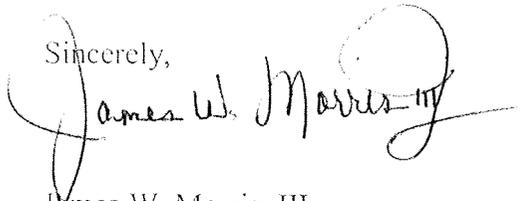
³We note Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and a credit card number under section 552.136 of the Government Code.

In summary, the sheriff (1) must withhold the marked fingerprints and palm prints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, unless the requestor has a right of access under section 560.002; (2) must withhold the marked crash report pursuant to section 550.065(b) of the Transportation Code; (3) may withhold the marked information that relates to the pending prosecution under section 552.108(a)(1) of the Government Code, except for the marked statutory warning and notice of suspension and the basic information that must be released under section 552.108(c); and (4) must withhold the marked credit card numbers under section 552.136 of the Government Code, unless the requestor has a right of access under section 552.023 of the Government Code. The sheriff must release the statutory warning, the notice of suspension, and the rest of the submitted information. As we are able to make these determinations, we need not address your other arguments against disclosure.

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J".

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

JWM/em

Ref: ID# 423378

Enc: Submitted information

c: Requestor
(w/o enclosures)