



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2011

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

OR2011-15709

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# 438705 (PIR# 11-692).

The Town of Flower Mound (the "town"), which you represent, received a request for all incident reports and arrest records related to the requestor. You claim that 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 submitted information.

We first note that the submitted documents contain a court record signed by a magistrate. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless it is confidential under other law. *See Gov't Code § 552.022(a)(17)*. Section 552.108 of the Government Code is a discretionary exception that protects a governmental body's interests and is therefore not "other law" that makes court records confidential for purposes of section 552.022. *See Open Records Decision No. 177 (1977)* (governmental body may waive statutory predecessor to section 552.108); *see also Open Records Decision No. 522 at 4 (1989)* (discretionary exceptions in general). Thus, the court record, which we have marked, in the submitted information may not be withheld pursuant to section 552.108. As you raise no other exceptions, we determine that this record must be released.

Next, we note the submitted information contains the requestor's fingerprints. Access to fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the

Government Code. Section 560.001 provides, in part, “[i]n this chapter . . . ‘[b]iometric identifier’ means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.” Gov’t Code § 560.001(1). Section 560.003 provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003. However, section 560.002 of the Government Code provides, “[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, section 560.002(1)(A) gives an individual or his authorized representative a right of access to his own fingerprint information. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, we note statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the town must release the submitted fingerprints, which we have marked, under section 560.002 of the Government Code.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to an ongoing investigation. Based upon your representation and our review, we conclude that release of the remaining information 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to this 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the town may withhold the remaining submitting information under section 552.108(a)(1). We note, however, that the town has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

In summary, the town must release the court document, which we have marked, to the requestor under section 552.022(a)(17). The town must also release the requestor's fingerprints, which we have marked, to the requestor under section 560.002.¹ Finally, with the exception of basic information, the town 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, 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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/sdk

Ref: ID# 438705

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the requestor has a right of access to the information being released, which would be confidential with respect to the general public, if the town receives another request for this information, the town must again seek a ruling from this office.