



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2012

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

OR2012-00315

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# 441540 (FM PIR # 736-11).

The Town of Flower Mound (the "town"), which you represent, received a request for a specified police report and the related surveillance video, blood test results, and Intoxilyzer test results. You note that the town does not possess the information responsive to the request for blood test results.¹ 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.

First, we note the submitted information includes the requestor's fingerprints. 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]." Gov't Code § 560.003; *see id.* § 560.001(1) ("'Biometric identifier' means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry"). However, section 560.002 of the

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Government Code provides 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). Thus, the requestor is entitled to her own fingerprints 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).

Next, we note that the submitted information includes the result of analysis of a breath specimen. Section 724.018 of the Transportation Code provides that on request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person’s attorney. Transp. Code § 724.018. Here, the requestor is the individual who submitted the specimen at the request of a peace officer. Thus, the town must release the breath test results to the requestor.

We also note the submitted information includes a court-filed document. Section 552.022(a)(17) of the Government Code requires 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). Although you seek to withhold this document under section 552.108, that section is a discretionary exception to disclosure that protects only the governmental body’s interests and may be waived. *See id.* § 552.007; Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 is not considered “other law” that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the marked court-filed document may not be withheld under section 552.108, and the town must release the document pursuant to section 552.022(a)(17).

You seek to withhold the remaining information under section 552.108(a) which 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). 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 a pending criminal investigation. Based upon this 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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note, however, the remaining information includes a DIC-24 statutory warning. The town provided a copy of this form to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the DIC-24 form may not be withheld under section 552.108.²

Additionally, 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 186-188; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the DIC-24 form and basic information, the town may withhold the remaining submitted information under section 552.108(a)(1).

In summary, the fingerprints must be released to this requestor pursuant to section 560.002(1)(A). The results of the requestor's breath test must be released to the requestor pursuant to section 724.018 of the Transportation Code. The marked court-filed document must be released pursuant to section 552.022(a)(17). With the exception of the DIC-24 form and 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

²We note the statutory warning includes the requestor's driver's license number, which the town would be required to withhold from the general public under section 552.130(a)(1) of the Government Code. Because section 552.130 protects personal privacy, the requestor has a right of access to her driver's license number under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (“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.”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See* Act of May 30, 2011, 82d Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). Thus, if the town receives another request for this same information from a person who would not have a right of access to the present requestor's private information, section 552.130(c) authorizes the town to redact her driver's license number.

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 cursive script, appearing to read "Kathryn R. Mattingly". The signature is written in black ink and is positioned above the typed name.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/sdk

Ref: ID# 441540

Enc. Submitted documents

c: Requestor
(w/o enclosures)