ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2012

Ms. Sol M. Cortez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2012-02665

Dear Ms. Cortez:

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# 445929.

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident involving a named individual. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted a social security number pursuant to section 552.147(b) of the Government Code and driver's license information under section 552.130 of the Government Code.[1] Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See* Gov't Code § 552.130(a). Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting

[1]On September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

a decision from this office under the Act. *Id.* § 552.147(b). The purpose of sections 552.130 and 552.147 is to protect the privacy interests of individuals. The requestor has provided an authorization and release form signed by the individual whose information is at issue. Thus, the requestor has a right of access to the driver's license number and social security number at issue under section 552.023(a) of the Government Code, and the department may not withhold this information from her. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

Next, we note the submitted information contains the individual at issue'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 that "[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 that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. Section 560.002 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). Thus, section 560.002(1)(A) of the Government Code gives an individual or his authorized representative a right of access to his own fingerprint information. In this instance, as previously noted, the requestor is the authorized representative of the individual whose fingerprints are at issue. Thus, the requestor has a right of access to the individual at issue's fingerprints, which we have marked, under section 560.002(1)(A). Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Attorney General Opinion DM-146 at 3 (1992); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions to 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 department must release the marked fingerprints to this requestor under section 560.002 of the Government Code.

Section 552.108(a)(1) 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 state, and provide documentation from the Office of the District Attorney for the 34th Judicial District showing, the remaining information relates to an ongoing investigation, and release of the information would interfere with the detection, investigation, and prosecution of a

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). Accordingly, we find section 552.108(a)(1) of the Government Code is generally applicable to the remaining information. We note, however, the information at issue includes a DIC-24 statutory warning and a DIC-25 notice of suspension. The department provided copies of these forms 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 and DIC-25 forms, which we have marked, may not be withheld under section 552.108 of the Government Code.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186-87. This information includes, but is not limited to, the details of the arrest, the physical condition of the arrested person, and a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information and the DIC-24 and DIC-25 forms we have marked, the department may generally withhold the remaining information under section 552.108(a)(1) of the Government Code.

We note the requestor is a representative of the Board of Law Examiners (the "board"). Section 411.100(a) of the Government Code provides, "[t]he [board] is entitled to obtain from the [Texas Department of Public Safety ("DPS")] criminal history record information maintained by [DPS] that relates to a person who is an applicant to take a bar examination." Gov't Code § 411.100. Moreover, section 411.087(a) of the Government Code provides in part:

> (a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from [DPS] criminal history record information maintained by [DPS] that relates to another person is authorized to:
>
> . . .
>
> (2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). "Criminal history record information" is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal

charges and their dispositions." *Id.* § 411.082(2). Thus, under sections 411.100 and 411.087, the requestor may have a right of access to any criminal history record information about the named individual contained in the department's records. The submitted police report lists the named individual as the arrested person. Thus, the report may contain criminal history record information about this individual.

Accordingly, if the individual who is named as the arrested person in the report is a person who is an applicant to take the bar examination, then the requestor is authorized to obtain the criminal history record information in the submitted report from the department pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .082(2), .100(a). Thus, if this condition is met, the department must make available to the requestor criminal history record information under section 411.087. *See* ORD 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, with the exception of basic information and the DIC-24 and DIC-25 forms, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. However if the individual who is named as the arrested person in the report does not meet the criteria of subsection 411.100(a), then the board does not have a special right of access to the criminal history record information under section 411.087. In that event, with the exception of basic information and the DIC-24 and DIC-25 forms, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must release the marked fingerprints to this requestor under section 560.002 of the Government Code. If the board has a right of access pursuant to section 411.087(a)(2) of the Government Code, the department must make available to the requestor criminal history record information under section 411.087 but may withhold the remaining information under section 552.108(a)(1) of the Government Code, with the exception of basic information and the marked DIC-24 and DIC-25 forms. If the board does not have a right of access to the criminal history record information under section 411.087, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code, with the exception of basic information and the DIC-24 and DIC-25 forms.[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,

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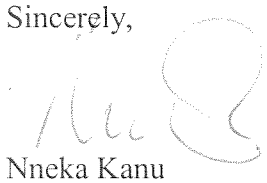
[2]We note that because the requestor has a special right of access to certain information in this instance, the department must again seek a decision from this office if it receives another request for the same information from a different requestor.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 445929

Enc. Submitted documents

cc: Requestor
(w/o enclosures)