



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 5, 2012

Ms. Kristi Fitzpatrick  
Public Safety Technician  
City of Seagoville Police Department  
600 North U.S. Highway 175  
Seagoville, Texas 75159

OR2012-08580

Dear Ms. Fitzpatrick:

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# 455657.

The Seagoville Police Department (the "department") received a request for police reports and video recordings related to a specified arrest. 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 submitted information.

Initially, we note the submitted information includes court-filed documents. 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 confidential under the Act or "other law." Gov't Code § 552.022(a)(17). Although you seek to withhold these documents 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 does not make information confidential under the Act. Therefore, the marked court-filed documents may not be withheld under section 552.108 and must be released.

We note the remaining information contains fingerprints belonging to the requestor's spouse. 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. Fingerprints are governed by chapter 560 of the Government Code, which is encompassed by section 552.101 of the Government Code. Section 560.001(1) provides that "[b]iometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." *Id.* § 560.001(1). Under section 560.003 of the Government Code, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. Section 560.002 states, 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). Accordingly, we find a person, or the person's authorized representative, has a right of access under section 560.002(1)(A) to that person's biometric information. Although you seek to withhold the information at issue 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). Thus, if the requestor is the individual's authorized representative, then the fingerprints we have marked must be released to this requestor pursuant to section 560.002(1)(A).

You seek to withhold the remaining information under section 552.108 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] release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information relates to a pending criminal case. We note, however, the information at issue includes a DIC-24 statutory warning and a DIC-25 notice of suspension, copies of which have been provided to the arrestee. You have not explained how releasing this information, which has been provided to 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 may not be withheld under section 552.108. However, we find 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).

We note 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; 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 and DIC-25 forms and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license or driver’s license issued by an agency of this state or another state or country is excepted from public release.<sup>2</sup> Gov’t Code § 552.130(a)(1). We note section 552.130 protects personal privacy. As noted above, the requestor is the spouse of the individual whose privacy interests are at issue, and thus may be the authorized representative of that individual. Accordingly, if the requestor is acting as the authorized representative of her spouse, the requestor has a right of access to her spouse’s motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. See *id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor is not acting as the authorized representative of her spouse, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the marked court-filed documents must be released pursuant to section 552.022(a)(17) of the Government Code. If the requestor is the authorized representative of the individual whose information is at issue, then the fingerprints we have marked must be released pursuant to section 560.002(1)(A) of the Government Code. Except for the DIC-24 and DIC-25 forms and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. If the requestor is not acting as the authorized representative of her spouse, the department must withhold the driver’s license numbers we have marked under section 552.130 of the Government Code. The remaining information must be released.

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.

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<sup>1</sup>Although basic information includes an arrestee’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. Gov’t Code § 552.147(b).

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 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 'C Galindo Jr.', written in a cursive style.

Charles Galindo Jr.  
Assistant Attorney General  
Open Records Division

CG/bs

Ref: ID# 455657

Enc. Submitted documents

c: Requestor  
(w/o enclosures)