



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 13, 2012

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2012-20057

Dear Ms. Cost:

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# 474437 (PIR # 12-3351).

The Texas Department of Public Safety (the "department") received a request for the oaths of office and required bonds for three named individuals and the police reports and specified video pertaining to two specified citations. You state the department has released basic arrest information to the requestor. 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 department has not submitted the oaths of office or required bonds for the named individuals. To the extent the department maintains information responsive to this part of the request that existed on the date the request was received, we assume the department has released it. If the department has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 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. Therefore, the requestor has a right of access to his own 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 Act). Therefore, the department must release to the requestor the fingerprints we have marked 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 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 inform us the remaining information relates to an ongoing criminal case. Based on your representation and our review, we conclude the release of this 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 the remaining information.

We note, and you acknowledge, 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 186-88. Basic information must be released, even if it does not literally appear on the front page of a report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Although you state the department has released basic arrest information, we note the information the department released does not include the arrestee’s social security number. We note basic information includes an arrestee’s social security number, but does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* Therefore, with the exception of basic information, including the requestor’s social security number, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must release the fingerprints we have marked to the requestor under section 560.002 of the Government Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 474437

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the information being released includes the 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. The requestor, however, has a right of access to his own social security number. *See generally id.* § 552.023(b). We also note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general decision. Accordingly, if the department receives another request for information from an individual other than the requestor or his authorized representative, the department is authorized to withhold the requestor's fingerprints under section 552.101 in conjunction with section 560.003.