



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 16, 2013

Mr. Robert S. Davis  
Counsel for Waller County  
Flowers Davis, P.L.L.C.  
1021 ESE Loop 323, Suite 200  
Tyler, Texas 75701

OR2013-08203

Dear Mr. Davis:

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# 487514.

Waller County (the "county"), which you represent, received a request for information regarding the requestor's son's death while in custody at the Waller County Jail, including information collected during his incarceration. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the county's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days

---

<sup>1</sup>Although you raise section 552.305, we note section 552.305 is not an exception to public disclosure under the Act. *See* Gov't Code § 552.305. Rather, this section addresses the procedural requirements for notifying third parties their interests may be affected by a request for information. *See id.* Additionally, although you also raise sections 552.107 and 552.111 of the Government Code, you have provided no arguments in support of these exceptions. Therefore, you have waived your claims under these sections. *See id.* §§ 552.301, .302.

after receiving the request. *See* Gov't Code § 552.301(b). The county received the request for information on February 25, 2013. Thus, the county was required to request a decision from this office by March 11, 2013. Consequently, because the county submitted the request for a decision on March 12, 2013, we find the county failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Although you assert the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, the county may not withhold the requested information under section 552.103 or section 552.108 based on its own interests. However, the need of a governmental body, other than the one that failed to comply with section 552.301, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure under section 552.302. Open Records Decision No. 586 (1991). You provide a letter from the Texas Rangers (the "rangers"), which states the rangers object to the release of the submitted information under section 552.108. Therefore, we will consider whether the county may withhold the submitted information under section 552.108 on behalf of the rangers. Additionally, because sections 552.101 and 552.102 can provide a compelling reason to withhold information under the Act, we will also consider your arguments under these sections.

Next, we note the submitted information contains documents filed with a court, which are subject to section 522.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the rangers seek to withhold this information under section 552.108 of the Government Code, as noted above, that section is a discretionary exception to disclosure and does not make information confidential under the Act. *See id.* § 552.007; ORDs 665 at 2 n.5, 177 at 3. Therefore, the court-filed documents may not be

withheld under section 552.108 of the Government Code. As no further exceptions against disclosure of the court-filed documents are raised, the county must release the court-filed documents, which we have marked, pursuant to section 552.022(a)(17) of the Government Code.

Next, we note the submitted information includes a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides the Office of the Attorney General shall make the custodial death report available to any interested person, with the exception of any portion of the report that the attorney general determines is privileged. *See* Crim. Proc. Code art. 49.18(b). The format of a custodial death report was revised in May 2006 and now consists of four pages and an attached summary of how the death occurred. The Office of the Attorney General has determined the four-page report and summary must be released to the public, but any other documents submitted with the revised report are confidential under article 49.18(b). Although the rangers seek to withhold the custodial death report under section 552.108 of the Government Code, the general exceptions to disclosure found in the Act do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the county must release the submitted custodial death report and the summary of how the death occurred, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure.

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. Section 552.101 encompasses section 560.003 of the Government Code, which provides “[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 retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code 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). Accordingly, 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. The submitted information contains the fingerprints of the deceased inmate at issue, which we have marked. Although the rangers seek to withhold the fingerprints under section 552.108 of the Government Code, as noted above, the general exceptions to disclosure found in the Act are not applicable to information that other statutes make public. *See* ORDs 623 at 3, 525 at 3. Therefore, if the requestor is a representative of the deceased individual’s estate, then he has a right of access to the marked fingerprints under section 560.002(1)(A) of the Government Code, and they must be released. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor is not a representative of the deceased individual’s estate, then the county must dispose of the fingerprints in accordance with the rest of this decision.

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(a)(1) 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

As noted above, you have provided our office with a letter from the rangers, in which the rangers state the submitted information pertains to an ongoing case with their office. The rangers state they seek to withhold the submitted information “until all information regarding this investigation has been received and reviewed by the proper authorities.” Based on these representations, we conclude 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). Accordingly, section 552.108(a)(1) is applicable to the remaining 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 186-87; *Open Records Decision No. 127 at 3-4 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the county may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the rangers.<sup>2</sup>

In summary, the county must release the court-filed documents subject to section 552.022(a)(17) of the Government Code and the custodial death report and the summary of how the death occurred pursuant to article 49.18(b) of the Code of Criminal Procedure, which we have marked. The county must also release the marked fingerprints under section 560.002(1)(A) of the Government Code if the requestor is a representative of

---

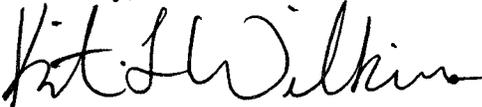
<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

the deceased individual's estate. With the exception of basic information, which must be released, the county may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the rangers.

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](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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/bhf

Ref: ID# 487514

Enc. Submitted documents

c: Requestor  
(w/o enclosures)