



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2013

Ms. Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County Attorney's Office  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2013-09207

Dear Ms. Rangel:

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# 489002.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information regarding the requestor's 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 a portion of the information is subject to section 552.022 of the Government Code, which provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains a court-filed document, which we have marked, that is subject to section 552.022(a)(17). Documents subject to

section 552.022(a)(17) are excepted from disclosure only if they are confidential under the Act or other law. You raise section 552.108 as an exception to disclosure of the court-filed document. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential under the Act and the court-filed document may not be withheld on that basis. As you raise no other exceptions to disclosure, the sheriff's office must release the court-filed document we have marked.

We further note the remaining information contains the requestor's fingerprint. 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, "[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, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. However, section 560.002 provides, "[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, section 560.002(1)(A) of the Government Code gives an individual a right of access to his own fingerprint information. Thus, the requestor has a right of access to his fingerprint 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 sheriff's office must release the fingerprint to the requestor under section 560.002 of the Government Code.

We now turn to your claim under section 552.108 of the Government Code for the remaining information. 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). 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 inform us that the submitted information pertains to a pending prosecution. Based upon this representation, we conclude that the 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests

that are present in active cases). Thus, we agree that section 552.108(a)(1) is applicable to this information.

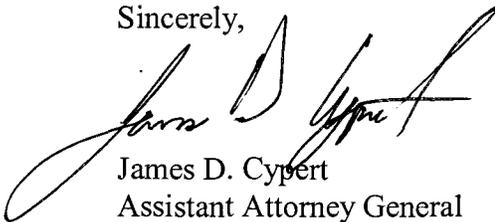
However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-8; see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the sheriff's office must release the requestor's fingerprint to him pursuant to section 560.002 of the Government Code. With the exception of the court-filed document and basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James D. Cypert  
Assistant Attorney General  
Open Records Division

JDC/ac

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<sup>1</sup>This ruling does not affect an individual's right of access to his or her medical records from the physician who provided treatment under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. See Occ. Code §§ 159.004, .005, .006; cf. *Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (MPA does not provide patient general right of access to his or her medical records from governmental body responding to a request for information under the Act).

Ref: ID# 489002

Enc. Submitted documents

c: Requestor  
(w/o enclosures)