



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2013

Mr. Steven Meyer
Assistant City Attorney
Legal Division
City of Arlington Police Department
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2013-16217

Dear Mr. Meyer:

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# 499626 (Police Dept. Reference No.11961).

The City of Arlington (the "city") received a request for twenty categories of information pertaining to a specified offense number. You inform us the city has released some information to the requestor. You also inform us the city does not have some of the requested information.¹ 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 representative sample of information.²

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. This section provides, in relevant part, as follows:

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under [the Act] or other law:

...

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

Gov't Code § 552.022(a)(17). We have marked court-filed documents subject to section 552.022(a)(17) of the Government Code. You seek to withhold this information under section 552.108 of the Government Code. However, this section is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the city may not withhold the information at issue under section 552.108 of the Government Code. However, because section 552.101 of the Government Code can make information confidential under the Act, we will address the applicability of this section to the court-filed documents subject to section 552.022(a)(17).³ We will also address your argument under section 552.108 for the information not subject to section 552.022(a)(17).

We first address the applicability of section 552.101 of the Government Code to the court-filed documents subject to section 552.022(a)(17). Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 560.003 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *See id.* § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Therefore, the city must withhold the fingerprints we have marked in the court-filed documents subject to section 552.022(a)(17) of the Government Code under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.⁴

We next address your argument under section 552.108 of the Government Code for the information not subject to section 552.022(a)(17). Section 552.108(a)(1) excepts from

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including a fingerprint 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 opinion.

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[.]” *Id.* § 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the information at issue pertains to a pending and open criminal incident that has not received a final disposition by the appropriate court of law. Based upon your representation and our review, we conclude section 552.108(a)(1) is generally applicable to this information. *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, however, the information at issue includes a DIC-24 statutory warning form and a DIC-25 notice of suspension form. Copies of these forms were provided to the arrestee. You have not explained how releasing the forms, which have 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 may not be withheld under section 552.108(a)(1).

Additionally, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. 531 S.W.2d at 186-187; *see* Open Records Decision No. 127 at 3-4 (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 city may withhold the information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code.

Section 552.130(a)(1) of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country is excepted from public release. *See Gov’t Code* § 552.130(a)(1). Thus, the city must withhold the driver’s license information we have marked in the DIC-24 and DIC-25 forms under section 552.130(a)(1) of the Government Code.⁵

In summary, the city must withhold the fingerprints we have marked in the court-filed documents subject to section 552.022(a)(17) of the Government Code under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. With the exception of the DIC-24 and DIC-25 forms and basic information, the city may withhold the information not subject to section 552.022(a)(17) of the Government Code

⁵We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as amendment to 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 Gov’t Code* § 552.130(d), (e).

under section 552.108(a)(1) of the Government Code. The driver's license information we have marked in the DIC-24 and DIC-25 forms must be withheld under section 552.130(a)(1) of the Government Code. The city must release the remaining information.

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, 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 499626

Enc. Submitted documents

c: Requestor
(w/o enclosures)