



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2013

Ms. Christina Alvarado
Assistant District Attorney
Dallas County Criminal District Attorney's Office
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2013-20673

Dear Ms. Alvarado:

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# 507993.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for all criminal records related to cause number F06-22709-Q involving a named individual. You claim the requested 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.¹

Initially, we note the submitted information includes the fingerprints of the requestor's client. The public availability of fingerprints is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.003 provides that "[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,

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

voiceprint, or record of hand or face geometry). 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). Although the district attorney’s office seeks to withhold the submitted fingerprints 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 district attorney’s office must release the fingerprints we have marked to this requestor pursuant to section 560.002 of the Government Code.

Next, we note the submitted information contains a CR-3 accident report form. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information made confidential by statute.² Gov’t Code § 552.101. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4).

The requestor has not provided the district attorney’s office with two of the three requisite pieces of information specified by the statute. Accordingly, the district attorney’s office must withhold the submitted CR-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993) (orig. proceeding), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380.

You state the instant request for information encompasses the district attorney's office's entire prosecution file related to a matter involving the named individual. You further state the information at issue was prepared by an attorney representing the state in the course of preparing for criminal litigation. You assert release of the information at issue would reveal the mental impressions or legal reasoning of the prosecutor. Based on your representations and our review of the submitted information, we agree section 552.108(a)(4) 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the district attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code.

In summary, the district attorney's office must release the fingerprints we have marked to this requestor pursuant to section 560.002 of the Government Code. The district attorney's office must withhold the submitted CR-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. With the exception of basic information, which must be released, the district attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 507993

Enc. Submitted documents

c: Requestor
(w/o enclosures)