



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2014

Ms. Lizbeth Islas Plaster  
City Attorney  
City of Lewisville  
P.O. Box 299002  
Lewisville, Texas 75029-9002

OR2014-04650

Dear Ms. Plaster:

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# 517155 (Lewisville PIR No. 14-025).

The City of Lewisville (the "city") received a request for the police report and "anything else associated with" a specified incident. You state you have released some information, including the DIC-24 statutory warning and DIC-25 notice of suspension. You claim the remaining 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 information.

Initially, we note some of the information, which we have marked, consists of a record that has been filed with a court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is made confidential under the Act or other law. *See* Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this 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 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for purposes of section 552.022(a)(17). Thus, the city may not withhold the court-filed document we have

marked under section 552.108 of the Government Code. As you raise no further exceptions for this information, it must be released.

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, "[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 of the Government Code 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). Thus, section 560.002(1)(A) gives an individual a right of access to his own fingerprint information. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, we note statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in 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 city must release the submitted fingerprints, which we have marked, to this requestor 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 state the submitted information relates to a pending criminal investigation and release of the information would interfere with that investigation. *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). Based on your representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable to the remaining information.

However, as you acknowledge, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, a sufficient portion of the narrative to include a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types

of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state you have released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the city must release the marked court document under section 552.022(a)(17) of the Government Code and the requestor's fingerprints under section 560.002 of the Government Code. With the exception of basic information, which you state you released, the city may withhold the remaining submitted 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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/eb

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<sup>1</sup>We note the released information includes the requestor's motor vehicle record information and social security number, to which the requestor has a right of access. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). 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* 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 id.* § 552.130(d), (e). Additionally, 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. *Id.* § 552.147(b). Accordingly, if the city receives another request for this same information from a person who does not have such a right of access, sections 552.130(c) and 552.147(b) authorize the city to redact the requestor's motor vehicle record information and social security number without the necessity of requesting a decision under the Act.

Ref: ID# 517155

Enc. Submitted documents

c: Requestor  
(w/o enclosures)