



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 2, 2014

Ms. Savannah Gonzalez  
Assistant District Attorney  
Hidalgo County  
100 North Clossner Boulevard, Room 303  
Edinburg, Texas 78539

OR2014-11432

Dear Ms. Gonzalez:

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# 527886 (Hidalgo County ID Nos. 2014-0034-DA and 2014-0038-DA).

The Hidalgo County Sheriff's Office (the "sheriff's office") and the Hidalgo County District Attorney's Office (the "district attorney's office," collectively the "county") each received a request from different requestors for information related to a named individual's death. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.

We first note the first requestor sought all applicable insurance policies, which you have not submitted to this office. Although you state the county has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the county to withhold any information that is substantially different from the types of information you submitted to this office. As this

office cannot review the insurance policies, we conclude you have failed to comply with the requirements of section 552.301 of the Government Code with respect to that information. *See* Gov't Code § 552.301(e)(1)(D). Under section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the presumption the information is public and must be released, unless there is a compelling reason to withhold the information. *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, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You claim section 552.101 of the Government Code for the insurance policies.<sup>1</sup> Section 552.101 can provide a compelling reason to overcome the presumption of openness; however, because this office is unable to review the insurance policies at issue, we have no basis to conclude the information is confidential by law. Therefore, to the extent information responsive to this portion of the request existed on the date the county received the request, we have no choice but to order the county to release that information. If you believe the information at issue is confidential and may not lawfully be released, then you must challenge this ruling in court as outlined below pursuant to section 552.324 of the Government Code.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

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

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

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

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<sup>1</sup>We note you claim the insurance policies at issue are confidential under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code. However, section 101.104 does not make insurance information confidential for purposes of section 552.101 of the Government Code. *See* Open Records Decision No. 551 at 3 (1990) (provisions of section 101.104 "are not relevant to the availability of the information to the public").

Gov't Code § 552.022(a)(1), (17). We note the submitted information contains completed reports and investigations subject to subsection 552.022(a)(1). The county must release the completed reports and investigations pursuant to subsection 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). We also note the submitted information contains court-filed documents subject to subsection 552.022(a)(17), which must be released unless they are made confidential under the Act or other law. *See id.* § 552.022(a)(17). Although you raise section 552.103 of the Government Code for the entirety of the submitted information, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, you may not withhold the completed reports and investigations, nor the information we have marked subject to subsection 552.022(a)(17), under section 552.103 of the Government Code. You also seek to withhold the information at issue under section 552.108 of the Government Code. Section 552.108 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision No. 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, you may not withhold the information subject to subsection 552.022(a)(17) under section 552.108 of the Government Code. As you raise no further exceptions to disclosure, the county must release the information subject to subsection 552.022(a)(17). However, as information subject to subsection 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your arguments under section 552.108 of the Government Code for the completed reports and investigations. We will also consider your claims for the information not subject to section 552.022.

We note the submitted information includes the deceased individual's fingerprints, which we have marked. The public availability of fingerprints is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.003 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). We note the requestors are representatives of the deceased individual's estate. Although the county seeks to withhold the fingerprints at issue under sections 552.103 and 552.108 of the Government Code, we note the exceptions to disclosure found in the Act are generally not applicable to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the

requestors have a right of access to the marked fingerprints pursuant to section 560.002(1)(A) of the Government Code, and the marked fingerprints must be released to the requestors.

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:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; [or]

...

(4) it is information that:

(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)(1), (2), (4). Subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. Subsection 552.108(a)(4) protects information that was prepared by an attorney for the state for litigation or that reflects an attorney's legal reasoning. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(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 that 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 that "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 request submitted to the district attorney's office seeks the district attorney's office's entire prosecution file. You further state this file contains the notes and mental impressions of a prosecutor investigating the case in anticipation of criminal litigation. Based upon these representations, we conclude subsection 552.108(a)(4) is applicable to this information. You state the remaining information pertains to criminal investigations and prosecutions by the county that concluded in a result other than conviction or deferred adjudication. Therefore, we agree subsection 552.108(a)(2) is applicable to this 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 Pub'l 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); *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the county may withhold the requested prosecution file under section 552.108(a)(4) of the Government Code and the remaining information under section 552.108(a)(2) of the Government Code.<sup>2</sup>

In summary, the county must release the information we have marked subject to subsection 552.022(a)(17) of the Government Code and the fingerprints we have marked pursuant to section 560.002(1)(A) of the Government Code. With the exception of basic information, the county may withhold the requested prosecution file under section 552.108(a)(4) and the remaining information under section 552.108(a)(2) of the Government Code.<sup>3</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/>

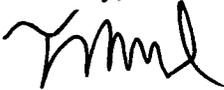
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<sup>2</sup>As we are able to resolve this issue under section 552.108, we do not address your remaining claims against disclosure of the submitted information, except to note basic information may generally not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

<sup>3</sup>We note this ruling does not affect the right of access of an individual or the individual's representative to that individual's own 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 Public Information Act).

[url\\_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,

A handwritten signature in black ink, appearing to read 'Tim Neal', written in a cursive style.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 527886

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)