



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2014

Ms. Laura Garza Jimenez
County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2014-13025

Dear Ms. Jimenez:

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# 532625.

The Nueces County Sheriff's Office (the "sheriff's office") received a request for specified information pertaining to the arrest of a named individual. The sheriff's office claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, you indicate some of the information you have submitted to us for review is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff's office is not required to release this information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

We next note some of the submitted information is subject to section 552.022(a)(3) of the Government Code, which provides the following:

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:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Although you assert the information subject to section 552.022(a)(3), which we have marked, is excepted from disclosure under section 552.108, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the sheriff's office may not withhold the information subject to section 552.022(a)(3) under section 552.108 but, instead, must release it to the requestor.

The submitted information also contains the fingerprints of the named individual. Chapter 560 of the Government Code provides a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). The submitted fingerprint information is confidential under section 560.003; however, the requestor may represent the individual whose information is at issue. Thus, the requestor may have a special right of access to the fingerprint information. *See id.* § 560.002(1). Although you assert this information is excepted under section 552.108 of the Government Code, the exceptions to disclosure found in the Act generally do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the sheriff's office must release the fingerprints we have marked if the requestor represents the individual whose information is at issue pursuant to section 560.002 of the Government Code. However, if the requestor does not represent this individual, then the sheriff's office may not release this information on that ground.

You assert the remaining information is excepted from disclosure under section 552.108(a) of the Government Code, which 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). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue 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, 710 (Tex. 1977). The sheriff's office states the remaining information relates to a pending criminal investigation or prosecution. Based on this representation, we conclude 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, 186-87 (Tex. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff's office may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.¹

To conclude, the sheriff's office must release the information we have marked under section 552.022(a)(3) of the Government Code. The sheriff's office must also release the fingerprints we have marked if the requestor represents the individual whose information is at issue pursuant to section 560.002 of the Government Code. With the exception of basic information, the sheriff's office may withhold the remaining responsive information under section 552.108(a)(1) 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

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¹As our ruling is dispositive, we do not address the other arguments of the sheriff's office to withhold the remaining information. We also note the basic information contains the arrestee's social security number. See ORD 127 at 4. 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. Gov't Code § 552.147(b). However, if the requestor represents the individual whose information is at issue, then he has a right to the social security number at issue. See *id.* § 552.023(b).

Ref: ID# 532625

Enc. Submitted documents

c: Requestor
(w/o enclosures)