



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2006

Mr. Asem Eltiar
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2006-12116

Dear Mr. Eltiar:

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# 265697.

The Arlington Police Department (the "department") received two requests from the same requestor for information related to case number 060062283. You claim that 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 information.

Initially, we note that the submitted information contains court-filed documents. Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under other law. *See* Gov't Code § 552.022(a)(17) (information contained in public court record is not excepted from required disclosure under Act unless expressly confidential under other law). Section 552.108 is a discretionary exception to disclosure that protect a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision Nos. 586 (1991) (section 552.108 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, section 552.108 does not constitute other law for purposes of section 552.022, and the department may not withhold the court-filed documents pursuant to that section.

The court-filed documents, however, contain the requestor's fingerprint information. The department must release this information to the requestor pursuant to section 560.002 of the Government Code. *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 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act).

We now address your argument under section 552.108 for the remaining information. Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, 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* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested offense report relates to a pending criminal investigation. Based on your representations and our review, we determine that the release of the offense report 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 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that 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*. 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic front page information, the department may withhold the remaining information pursuant to section 552.108(a)(1). We note that you have the discretion to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

We note that the basic information includes the arrestee's social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. However, section 552.147 excepts information from disclosure in order to protect an individual's privacy. Therefore, the requestor has a special right of access to his own social security number, and it may not be withheld from him under section 552.147. *See* Gov't Code § 552.023.

In summary, the department must release the court-filed documents pursuant to section 552.022(a)(17) of the Government Code, and the fingerprint information pursuant

of the Government Code. With the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108.¹

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

¹If the department receives a future request for this information from an individual other than the requestor or his authorized representative, the department should again seek our decision.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/vh

Ref: ID# 265697

Enc. Submitted documents

c: Mr. Darren Bradley Swain
P.O. Box 210083
Bedford, Texas 76021
(w/o enclosures)