



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2009

Mr. Matthew C.G. Boyle
Boyle & Lowry, L.L.P.
42201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2009-04747

Dear Mr. Boyle:

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# 344167.

The Bedford Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You state that you have released some of the requested information, but claim that the remaining information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that section 552.022(a)(17) of the Government Code is applicable to some of the submitted information. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). We have marked the information that is subject to section 552.022(a)(17). Although you seek to withhold these

¹Although the department raised section 552.101 of the Government Code as an exception to disclosure, it did not submit to this office written comments stating the reasons why this section would allow the information to be withheld; therefore, we assume the city no longer asserts this exception. We also note that the department failed to timely assert section 552.130 of the Government Code; however, because this section is a mandatory exception, we will address the department's argument under it. *See* Gov't Code §§ 552.301(b), 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.-Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302).

documents under section 552.108 of the Government Code, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the department may not withhold the court-filed documents under section 552.108 of the Government Code. As you raise no further exceptions to disclosure of this information, the information subject to section 552.022(a)(17) must be released to the requestor.

We next note that the submitted information contains the fingerprints of the requestor's clients. Chapter 560 of the Government Code provides that 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), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (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 has a special right of access to his clients' fingerprint information. *See id.* § 560.002(1). Therefore, the department must release this information, which we have marked, pursuant to section 560.002.

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 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 that the submitted information relates to a pending criminal case. Based on this representation, we conclude that release of this 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 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases):

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which the department must release to the requestor, the department may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code.

Next, we address your contention that a portion of Exhibit A is excepted under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Id. § 552.130(a). We note that the requestor is the authorized representative for two individual whose Texas motor vehicle information is listed in the remaining information. Section 552.130 of the Government Code protects personal privacy. Thus, the requestor, as the authorized representative of his clients, has a right of access to his clients' Texas motor vehicle record information under section 552.023, and it may not be withheld from him under section 552.130. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). However, the department must withhold the remaining Texas motor vehicle information you have marked in Exhibit A under section 552.130 of the Government Code.

In summary: (1) the marked fingerprints must be released to this requestor pursuant to section 560.002 of the Government Code; (2) the marked court documents must be released pursuant to section 552.022(a)(17) of the Government Code; (3) with the exception of basic information, the department may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code; (4) Except for his clients' Texas motor vehicle record information, the department must withhold the Texas motor vehicle information you have marked in Exhibit A under section 552.130 of the Government Code. The remaining information must be released to the requestor.²

Finally, we understand you to ask this office to issue the department a previous determination permitting the department to withhold fingerprints and information subject to section 552.130 of the Government Code. *See Gov't Code* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue a previous determination for this type of information at this time. Accordingly, 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.

²Because the requestor has a special right of access to certain information in this instance, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Paige Savoie".

Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 344167

Enc. Submitted documents

cc: Requestor
(w/o enclosures)