



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2009

Mr. Robert Massey
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2009-08228

Dear Mr. Massey:

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# 345957.

The Wichita Falls Police Department (the "department") received a request for all information listing the requestor's client as the alleged perpetrator. You claim that the submitted information is excepted from disclosure under section 552.108 and 552.147 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that the submitted information includes a fingerprint. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This exception encompasses information that other statutes make confidential, such as section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 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). Thus, as the individual's attorney, the requestor has a right of access to the individual's fingerprint under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

theories not implicated when individual requests information concerning himself). Although the department seeks to withhold the fingerprint under section 552.108 of the Government Code, the exceptions to disclosure found in the Act are generally not applicable to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the department must release the fingerprint that we have marked to this requestor pursuant to section 560.002 of the Government Code.

We next note that section 552.022(a)(17) of the Government Code is applicable to a portion 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 documents that are subject to section 552.022(a)(17). Although you seek to withhold this information 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 marked documents that are subject to section 552.022(a)(17) may not be withheld under section 552.108 and must be released.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning a criminal investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that case number 03-080985 pertains to a closed case that did not result in a conviction or deferred adjudication. Based on your representations, we agree that section 552.108(a)(2) is applicable to the submitted information.

However, we note that basic information about an arrested person, an arrest or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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.E. 2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold case number 03-080985 pursuant to section 552.108(a)(2).²

You claim portions of the remaining information are excepted from disclosure under section 552.147 of the Government Code. Section 552.147 of the Government Code

² As our ruling is dispositive, we need not address your argument under section 552.130.

provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. We note that some of the information you have marked is not the social security number of a living person. We have marked this information for release. We also note the remaining information contains the requestor’s client’s social security number, which may not be withheld in this instance. *See id.* § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests). Therefore, with the exception of the information we have marked for release, the department may withhold the information you have marked under section 552.147.³

In summary, the department must release the information we have marked under section 560.002 of the Government Code. In addition, with the exception of the information we have marked under section 552.022(a)(17) and basic information, the department may withhold case 03-080985 under section 552.108(a)(2). With the exception of the information we have marked for release, the department may withhold the information you have marked under section 552.147. The remaining information must be released.

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.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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

³ We note that 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.

Ref: ID# 345957

Enc. Submitted documents

cc: Requestor
(w/o enclosures)