



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 24, 2009

Ms. Cynthia R. Garza  
Assistant District Attorney  
Dallas County  
Frank Crowley Courts Building  
133 North Industrial Boulevard, LB-19  
Dallas, Texas 75201-4399

OR2009-10280

Dear Ms. Garza:

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# 351085.

The Dallas County District Attorney's Office (the "district attorney") received a request for a file related to the investigation and prosecution of a named individual for a specified crime, including photographs, videotapes, witness statements, and notes. You state that the district attorney has no responsive videotapes.<sup>1</sup> You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.130, and 552.147 of the Government Code, and privileged under rule 192.5 of the Texas Rules

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<sup>1</sup>We note the Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

of Civil Procedure.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note that the submitted information contains the requestor's client's fingerprints. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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]." 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[.]" Gov't Code § 560.002(1)(A). Thus, as the individual's attorney, the requestor has a right of access to the individual's fingerprints under section 560.002(1)(A). Therefore, the district attorney must release the submitted fingerprints under section 560.002 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

Next, we note that portions of the submitted information are subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

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

Gov't Code § 552.022(a)(17). In this instance, the submitted information includes motions filed with the court. This information is expressly public under section 552.022(a)(17) and the district attorney must release it unless it is confidential under other law. You raise sections 552.103, 552.108, and 552.111 of the Government Code for this information. However, these are discretionary exceptions to disclosure that protect the governmental

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<sup>2</sup>Although you raise section 552.101 for the social security numbers included in the submitted information, the proper exception for this information is section 552.147.

<sup>3</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.