



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 21, 2009

Ms. Josefina J. Brostrom  
Assistant County Attorney  
El Paso County Attorney's Office  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2009-11820

Dear Ms. Brostrom:

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# 357608 (El Paso County Attorney File No. OP-09-331).

The El Paso County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified case. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information includes the requestor's client's fingerprints. Section 560.003 of the Government Code provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]."<sup>1</sup> 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[.]" *Id.* § 560.002(1)(A). Thus, the fingerprint that we have marked must be released to this requestor pursuant to section 560.002(1)(A). *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

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<sup>1</sup>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.

Next, you claim that the most of the remaining information, which you have marked, is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts “[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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state and provide a letter from the 34<sup>th</sup> Judicial District Attorney’s Office (the “district attorney”) confirming that the submitted information is related to a pending criminal investigation and prosecution. Based on these representations, we conclude that section 552.108(a)(1) is generally applicable to the information you have marked. *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).

However, section 552.108 is inapplicable to 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 186-87. Basic information includes, among other things, an arrestee’s name, social security number, alias, race, sex, age, and address.<sup>2</sup> *See id.* at 179-80, 185-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The sheriff must generally release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of basic information, which must be released, the sheriff may withhold the information you have marked under section 552.108(a)(1).<sup>3</sup>

Finally, you claim that the information you have marked in the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130. Upon review, we find that the sheriff must withhold the Texas motor vehicle record information we have

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<sup>2</sup>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. The requestor has a right, however, to his client’s social security number. *See generally* Gov’t Code § 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).

<sup>3</sup>As our ruling is dispositive with respect to the information you have marked under section 552.108, we do not address your remaining claims against disclosure of this information, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

marked under section 552.130. The remaining information you have marked is not the type of information that is protected by section 552.130 and it may not be withheld on that basis.

In summary, the marked fingerprint must be released to this requestor pursuant to section 560.002 of the Government Code. With the exception of basic information, which must be released, the sheriff may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The sheriff must withhold the Texas motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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](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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/jb

Ref: ID# 357608

Enc. Submitted documents

c: Requestor  
(w/o enclosures)