



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2009

Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
4616 Howard Lane, Suite 250
Austin, Texas 78728

OR2009-17820

Dear Mr. West:

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# 362996.

The Office of the Inspector General of the Texas Department of Criminal Justice (the "department") received a request for information relating to a named inmate. You state that some of the requested information either has been or will be released, with redactions pursuant to section 552.147 of the Government Code and a previous determination issued to the department under section 552.117 of the Government Code.¹ You contend that other responsive information is not subject to disclosure under the Act. You also claim that other responsive information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.130, 552.1325, 552.134, and 552.137 of

¹See Gov't Code § 552.147(b) (authorizing governmental body to redact living person's social security number from public release under Gov't Code § 552.147 without necessity of requesting attorney general decision under Act); Open Records Letter No. 2005-01067 (2005) (authorizing department to withhold information relating to its current or former employees under Gov't Code § 552.117(a)(3) without necessity of requesting attorney general decision). We note that other information has been redacted from the submitted documents that the department is not authorized to withhold without requesting a decision under the Act. In this instance, we are able to ascertain the nature of the redacted information and thus are not prevented from ruling on its public availability. In the future, however, the department should refrain from redacting any information that it submits to this office in requesting a decision unless the department has specific authorization to do so. See Gov't Code §§ 552.301(a), .302.

the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.² We also have considered the comments that we received from the requestor.³ *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

We begin with your representation that the submitted information includes telephone records that were obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. *See id.* § 552.003(1)(B). This office has determined that for the purposes of the Act, a grand jury is a part of the judiciary and is therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Moreover, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and therefore are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 398 (1983); *but see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Thus, to the extent that the department has possession of the submitted telephone records as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to the Act. This decision does not address the public availability of any such information. To the extent that the department does not have possession of the telephone records as an agent of the grand jury, the information is subject to the Act and must be released, unless it falls within an exception to public disclosure.

²This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988). We note that the submitted information includes documents that reference "unscanned material" stored on diskettes. We assume that the "unscanned materials" are represented by information contained in the rest of the submitted documents.

³Among other things, the requestor asserts a right of access to information relating to the named inmate, as his attorney, under section 552.023 of the Government Code. Section 552.023 provides in part that "[a] governmental body may not deny access to a person, or the person's representative, to the whom the information relates on the grounds that the information is considered confidential by privacy principles under [the Act] but may assert as grounds for denial of access other provisions of [the Act] or other law that are not intended to protect the person's privacy interests." Gov't Code § 552.023(b). In this instance, the exceptions to disclosure and other law on which the department relies are generally not intended to protect personal privacy.

Next, we address that requestor's assertion that she should be allowed access, as the named inmate's attorney, to information maintained by the department that the inmate's previous attorneys were permitted to review. We note that the Act does not permit the selective disclosure of information to the public. See Gov't Code §§ 552.007, .021; Open Records Decision No. 463 at 1-2 (1987). If a governmental body voluntarily releases information to a member of the public, then such information may not later be withheld from another member of the public unless its disclosure is expressly prohibited by law or the information is confidential under law. See Gov't Code § 552.007. However, the 81st Legislature recently enacted article 38.02 of the Code of Criminal Procedure, which provides:

A release of information by an attorney representing the state to defense counsel for a purpose relating to the pending or reasonably anticipated prosecution of a criminal case is not considered a voluntary release of information to the public for purposes of Section 552.007, Government Code, and does not waive the right to assert in the future that the information is excepted from required disclosure under Chapter 552, Government Code.

Crim. Proc. Code art. 38.02. The enactment of article 38.02 codifies this office's long-standing interpretation that the disclosure of potentially exculpatory evidence to the defense, as required by *Brady v. Maryland*, 373 U.S. 83 (1963), does not waive the prosecuting governmental body's right to claim exceptions to disclosure under the Act. See Open Records Decision No. 454 (1986). Thus, the review of the information at issue by the inmate's previous attorneys in the context of criminal litigation is considered an involuntary release that does not constitute selective disclosure for purposes of section 552.007 or waiver of the department's right to claim exceptions to disclosure under the Act. Therefore, to the extent that the information at issue is subject to the Act, we will consider the department's exceptions to disclosure under the Act.

We note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). Section 552.022(a)(17) provides for required disclosure of "information that is also contained in a public court record[.]" *Id.* § 552.022(a)(17). In this instance, the submitted information includes completed reports made of, for, or by the department that are subject to section 552.022(a)(1) and court documents that are subject to section 552.022(a)(17). We have marked that information.

Although you claim exceptions to disclosure under sections 552.103, 552.107(1), and 552.108 of the Government Code, those sections are discretionary exceptions that protect a governmental body's interests and may be waived. See *id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos.

Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, sections 552.103 and 552.107(1) are not other law that makes information confidential for the purposes of section 552.022(a)(1) or section 552.022(a)(17). Likewise, section 552.108 is not other law that makes information confidential for the purposes of section 552.022(a)(17). Therefore, the information that is subject to section 552.022(a)(1) may not be withheld under section 552.103 or section 552.107(1), and the information that is subject to section 552.022(a)(17) may not be withheld under section 552.103, section 552.107(1), or section 552.108. However, we will consider your claims under sections 552.103 and 552.107(1) for the information that is not subject to section 552.022(a)(1) or (17). We also will consider your claim under section 552.108 for the information that is not subject to section 552.022(a)(17). Additionally, we will consider your arguments under sections 552.101, 552.130, 552.1325, 552.134, and 552.137 of the Government Code, which are confidentiality provisions for the purposes of section 552.022(a)(1) and (17).

With regard to your assertion of the attorney-client privilege under section 552.107(1), we note that the Texas Rules of Evidence have been held to be "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). The attorney-client privilege is also found at Texas Rule of Evidence 503. Accordingly, we will determine whether rule 503 is applicable to any of the submitted information that is subject to section 552.022. Rule 503 enacts the attorney-client privilege and provides in part:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

- (A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;
- (B) between the lawyer and the lawyer's representative;
- (C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;
- (D) between representatives of the client or between the client and a representative of the client; or
- (E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You state that the submitted information contains communications between law enforcement and prosecutorial officials that were made for the purpose of rendering legal advice. You contend that such communications are protected by the attorney-client privilege. We find, however, that you have not demonstrated that any of the information that is subject to section 552.022 of the Government Code falls within the scope of the attorney-client privilege. We therefore conclude that the department may not withhold any of that information on the basis of Texas Rule of Evidence 503.

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. You raise section 552.101 in conjunction with article 20.02(a) of the Code of Criminal Procedure, which provides that “[t]he proceedings of the grand jury shall be secret.” Crim. Proc. Code art. 20.02(a). In construing article 20.02 of the Code of Criminal Procedure, the types of “proceedings” Texas courts have generally stated are secret are testimony presented to the grand jury and the deliberations of the grand jury. *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, no pet.); *see also Stern v. State*, 869 S.W.2d 614 (Tex. App.—Houston [14th Dist] 1994, no writ) (stating that anything that takes place before the bailiffs and grand jurors, including deliberations and testimony, is secret). You have not demonstrated that any of the submitted information reveals grand jury testimony or deliberations of the grand jury. We therefore conclude that the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with article 20.02 of the Code of Criminal Procedure.

Medical records are confidential under the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. The MPA governs the public availability of medical records. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(b)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked the types of information that are confidential under the MPA. As an attorney for the inmate who is the subject of this request for information, the requestor may have a right of access to his medical records. Thus, the marked medical records must be withheld under section 159.002 of the MPA, unless the department receives the required written consent for their release under sections 159.004 and 159.005.

The public availability of fingerprints is governed by chapter 560 of the Government Code. Section 560.003 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[.]" *Id.* § 560.002(1)(A). The submitted information includes the fingerprints of the inmate whom the requestor represents. The inmate's fingerprints, which we have marked, must be released to this requestor pursuant to section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a

reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). We also find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We have marked criminal history information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses the common law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See Open Records Decision No. 279 at 2 (1981)* (citing *Wigmore, Evidence*, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988)*. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*. Although you contend that "the responsive documents contain information regarding persons who are considered to be 'informants' who provided information to law enforcement officials," you have not identified any such persons or any information they provided. We therefore conclude that the department may not withhold any of the submitted information on the basis of the informer's privilege.

You also claim section 552.134 of the Government Code, which is applicable to information relating to inmates of the department. Section 552.134(a) states that

[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.029 of the Government Code provides, however, that

[n]otwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure[:]

(1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate; [and]

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(1), (8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

We find that much of the remaining information relates to inmates of the department, including the inmate who is the subject of this request for information. Although we understand that two of the inmates are now deceased, we note that section 552.134(a) is applicable to information relating to deceased inmates. We also understand that all five of the living inmates to whom the submitted information pertains are subject to death sentences. We note that section 552.134(a) is not applicable to information about an inmate sentenced to death. *See id.* § 552.134(b). You indicate, however, that the inmates to whom the submitted information pertains were not subject to death sentences at the time of the creation of the information. Based on your representations and our review of the information at issue, we conclude that section 552.134 is generally applicable to the information we have marked. We note, however, that the marked information includes the department's official photographs of inmates and information concerning alleged crimes involving inmates. Accordingly, the inmates' photographs and basic information about the alleged crimes involving inmates are subject to disclosure under section 552.029. Basic information under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. With the exception of inmates' official photographs and basic information, the department must withhold the information we have marked under section 552.134 of the Government Code.

Turning to your claims under sections 552.103 and 552.108 of the Government Code, Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

(b) For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Id. § 552.103. A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both elements of this test for information to be excepted under section 552.103.

You contend that the remaining information at issue is related to pending litigation of a criminal nature. You inform us that three of the inmates to whom the information pertains have writs pending in federal court. You indicate that a fourth inmate has a writ pending in state court. You state that the inmate who is the subject of this request has been appointed an attorney in anticipation of filing a federal writ. Based on your representations, we find that the remaining information is related to litigation of a criminal nature that was pending or reasonably anticipated when the department received this request for information. We understand that the department is or will be a party to the litigation of the writs. We therefore conclude that the department may withhold the remaining information that is not subject to section 552.022(a)(1) or (17) under section 552.103 of the Government Code. We have marked that information.

In reaching this conclusion, we assume that the opposing parties in the related litigation have not seen or had access to any of the marked information. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. If the opposing parties have seen or had access to information relating to litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 ends once the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Next, we address your claims under section 552.108. Section 552.108(a)(1) 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception 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 that the remaining information is related to a pending investigation. We understand, however, that this investigation pertains to the post-conviction writs described above. We note that post-conviction writ proceedings do not establish the existence of an ongoing criminal investigation or prosecution for the purposes of section 552.108(a)(1). You do not indicate that the remaining information is otherwise related to a pending criminal case. We therefore conclude that the department may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov’t Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state that the remaining information includes shift rosters. We note that Open Records Letter No. 2004-6370 (2004) serves as a previous determination for the department with respect to shift rosters. Therefore, the department may withhold the submitted shift rosters under section 552.108(b)(1) of the Government Code pursuant to the previous determination issued in Open Records Letter No. 2004-6370. *See* Gov’t Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov’t Code § 552.301(a)). You also contend that the submitted records include information relating to security threat groups, investigative techniques, and unit security and operations. Based on your arguments, we have marked information relating to unit security that may be withheld under section 552.108(b)(1). We find that you have not demonstrated

that the release of any of the remaining information would interfere with law enforcement or crime prevention. We therefore conclude that the department may not withhold any of the remaining information under section 552.108(b)(1).

You also raise section 552.108(b)(2), which excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(b)(2). We note that section 552.108(b)(2) is only applicable to information pertaining to a concluded investigation that did not result in a conviction or a deferred adjudication. You state that the remaining information is related to a pending investigation. We therefore conclude that the department may not withhold any of the remaining information under section 552.108(b)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state. *See id.* § 552.130(a)(1)-(2). The department must withhold the Texas motor vehicle information we have marked under section 552.130.

Section 552.1325 of the Government Code provides as follows:

(a) In this section:

(1) “Crime victim” means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) “Victim impact statement” means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Id. § 552.1325. As you have not demonstrated that section 552.1325 of the Government Code is applicable to any of the remaining information, the department may not withhold any of the information under this exception.

We note that section 552.136 of the Government Code is applicable to some of the remaining information.⁴ Section 552.136(b) states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We have marked a credit card account number that must be withheld under section 552.136.

We also note that some of the remaining information may be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) any submitted telephone records held by the department as an agent of the grand jury are in the grand jury’s constructive possession and are not subject to the Act; (2) the types of information we have marked under section 159.002 of the MPA must be withheld, unless the department receives the required written consent for release under sections 159.004 and 159.005 of the MPA; (3) the inmate’s marked fingerprints must be released pursuant to section 560.002 of the Government Code; (4) the information we have marked under section 552.101 of the Government Code and common-law privacy must be withheld; (5) with the exception of inmates’ official photographs and basic information regarding crimes involving inmates, the department must withhold the information we have marked under section 552.134 of the Government Code; (6) the department may withhold the information we have marked under section 552.103 of the Government Code; (7) the shift rosters may be withheld under section 552.108(b)(1) of the Government Code pursuant to the previous determination issued in Open Records Letter No. 2004-6370; (8) the information we have marked under section 552.108(b)(1) may also be withheld on that basis; (9) the marked Texas motor vehicle information must be withheld under section 552.130 of the Government Code; and (10) the marked credit card number must be withheld under section 552.136 of the Government Code.⁵ The department must release the rest of the submitted information, including the marked court documents that are subject to

⁴Unlike other exceptions to disclosure under the Act, this office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

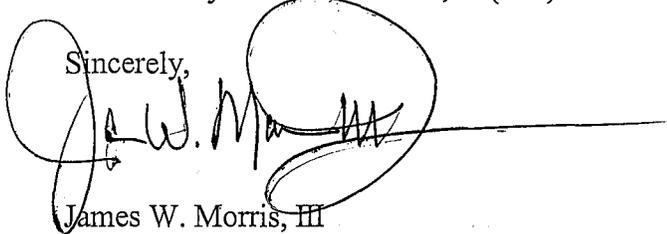
⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license and license plate numbers under section 552.130 of the Government Code and credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

section 552.022(a)(17) of the Government Code, but any information that is protected by copyright may only be released in accordance with copyright law.⁶ As we are able to make these determinations, we do not address your other arguments against disclosure.⁷

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", is written over a horizontal line. The signature is enclosed in a large, hand-drawn circle.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 362996

Enc: Submitted documents

c: Requestor
(w/o enclosures)

⁶We note that the remaining information includes social security numbers. 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.

⁷Because the requestor has a right to her client's fingerprints, which the department would ordinarily be required to withhold, the department should resubmit the fingerprints and request another ruling if it receives a request for that information from a person who would not have a right of access to it. See Gov't Code §§ 552.301, .302.