



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 1, 2010

Mr. Brian L. Rose  
Assistant General Counsel  
Harris County District Attorney  
1201 Franklin, Suite 600  
Houston, Texas 77002-1901

OR2010-09704

Dear Mr. Rose:

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# 384883.

The Harris County District Attorney (the "district attorney") received a request for information concerning a specified investigation. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you inform us the requested information was the subject of a previous request in response to which this office issued Open Records Letter No. 2010-00876 (2010). In that ruling, we concluded that with the exception of basic information, the district attorney may withhold the submitted information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). We have no indication that the law, facts, and circumstances on which the prior ruling was based have changed with

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<sup>1</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.

respect to most of the submitted information that was the subject of that ruling. However, we note one of the submitted documents contains the fingerprint of the requestor, access to which is governed by sections 560.002 and 560.003 of the Government Code. Therefore, we will address the applicability of these sections to the requestor's fingerprint. Accordingly, with the exception of the requestor's fingerprint, the district attorney may withhold or release the remaining information subject to Open Records Letter No. 2010-00876 in accordance with that ruling.<sup>2</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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. Section 552.101 encompasses 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). In this instance, the requestor has a right of access to his own fingerprint. *See id.* § 560.002(1); *id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Although the district attorney 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). Accordingly, we find that the district attorney may not withhold the fingerprint we have marked, but must release it to the 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 himself).

In summary, the district attorney must release the marked fingerprint pursuant to section 560.002(1)(A) of the Government Code. The district attorney may withhold or release the remaining information subject to Open Records Letter No. 2010-00876 in accordance with that ruling.

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<sup>2</sup>As our ruling is dispositive, we need not address your arguments against disclosure of this information.

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

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 384883

Enc. Submitted documents

c: Requestor  
(w/o enclosures)