



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2010

Mr. R. Brooks Moore
Assistant General Counsel
The Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845

OR2010-18437

Dear Mr. Moore:

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# 402421 (TAMU 10-469).

Texas A&M University (the "university") received a request for information related to arrest report 09-02319 and the personnel files of two university police officers. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes the fingerprints of the arrestee. 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, "[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). However, section 560.002 of the Government Code provides, "[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). We note the fingerprints in this case are those of the requestor's client. Thus, they 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 himself).

Additionally, we note the requested arrest report as well as the completed employee evaluations within the requested personnel files are subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) 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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The arrest report and employee evaluations are expressly public under section 552.022(a)(1). Therefore, the university must release this information unless it is confidential under other law or excepted from disclosure under section 552.108. Although you claim the arrest report and employee evaluations are excepted from disclosure under section 552.103 of the Government Code, this section is a discretionary exception that a governmental body may waive. *See 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 section 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not “other law” that makes information expressly confidential for purposes of section 552.022. Thus, the university may not withhold the arrest report or the employee evaluations under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your arguments under that section for the arrest report, the employee evaluations, and the remaining submitted information.

Section 552.108(a) of the Government Code 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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You provide a letter from the Brazos County Attorney stating the prosecution of the incident at issue is pending and that release of the information at issue will interfere with the prosecution. You also state the officers whose personnel files are at issue were the arresting officers in this

case, and they are involved with the prosecution of the alleged crime. Thus, we find section 552.108(a)(1) is applicable to the arrest report, the employee evaluations and the remaining submitted information. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note, however, the arrest report includes a DIC-24 statutory warning and DIC-25 notice of suspension. The university's police department provided a copy of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). Accordingly, the DIC-24 statutory warning and DIC-25 notice of suspension may not be withheld under section 552.108 of the Government Code.

Additionally, section 552.108 does not except from disclosure 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*, and includes, among other items, an identification and description of the complainant, a detailed description of the offense, and the details of the arrest. See 531 S.W.2d at 186–87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of the DIC-24 statutory warning, the DIC-25 notice of suspension, and basic information, the university may withhold the arrest report, employee evaluations, and remaining submitted information under section 552.108(a)(1) of the Government Code.¹

In summary, the fingerprints of the requestor's client must be released to this requestor pursuant to section 560.002(1)(A) of the Government Code. With the exception of the DIC-24 statutory warning, the DIC-25 notice of suspension, and basic information, the university may withhold the remaining information under section 552.108(a)(1) of the Government Code. The DIC-24 statutory warning, the DIC-25 notice of suspension, and basic information must be released.²

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.

¹As our ruling is dispositive, we do not address your remaining claim under section 552.103 of the Government Code, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103. Open Records Decision No.597 (1991).

²We note that because the requestor has a special right of access to certain information being released in this instance, the university must again seek a decision from this office if it receives another request for the same information from another requestor.

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 "Neal Falgoust". The signature is written in a cursive style with a large initial "N" and a long, sweeping tail.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 402421

Enc. Submitted documents

c: Requestor
(w/o enclosures)