



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 18, 2011

Ms. Michelle L. Villarreal  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2011-00832

Dear Ms. Villarreal:

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# 406224 (LGL-10-1511).

The City of Waco (the "city") received a request for information relating to a homicide involving a named decedent. You indicate some of the requested information has been released. You claim other responsive information is excepted from disclosure under sections 552.108 and 552.130 of the Government Co. We have considered the exceptions you claim and reviewed the information you submitted.<sup>1</sup>

We note the submitted information includes the homicide victim's fingerprints, which we have marked. The public availability of fingerprints is governed by sections 560.001, 560.002, and 560.003 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 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[.]"

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<sup>1</sup>This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city 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).

*Id.* § 560.002(1)(A). Although the city seeks to withhold the marked fingerprints under section 552.108 of the Government Code, we note the exceptions to disclosure found in the Act are generally not applicable to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, if the requestor is a representative of the victim's estate, then she has a right of access to his fingerprints under section 560.002(1)(A) of the Government Code, and the marked fingerprints must be released. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor is not a representative of the victim's estate, then the city must dispose of the fingerprints in accordance with the rest of this decision.

Section 552.108(a)(1) 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). Section 552.108(a)(2) excepts "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" *Id.* § 552.108(a)(2). As a general rule, section 552.108(a)(1) and section 552.108(a)(2) apply to two mutually exclusive types of information. Section 552.108(a)(1) is applicable to information whose release would interfere with the detection, investigation, or prosecution of crime. Section 552.108(a)(2) is applicable to information relating to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 claim both section 552.108(a)(1) and section 552.108(a)(2). You state the submitted information is related to a case that "has never been prosecuted, [but] has also never been closed." You also have submitted a memorandum from the city's police department (the "department"), requesting the submitted information not be released "due to [the crime] never having been prosecuted[.]" We note the submitted information is related to an investigation of a homicide. We also note there is no statute of limitations for the crimes of murder and manslaughter. *See* Crim. Proc. Code art. 12.01(1)(A). Thus, we understand you to state the information at issue is related to an open case that has yet to result in a conviction or a deferred adjudication. Based on your representations, the department's memorandum, and our review of the submitted information, we find release of the information at issue would interfere with the detection, investigation, or prosecution of crime. We therefore conclude section 552.108(a)(1) is applicable in this instance.<sup>2</sup> *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).

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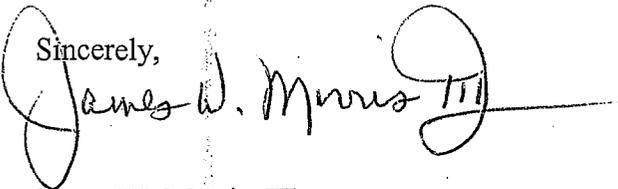
<sup>2</sup>As we are able to make this determination, we need not address the other exception you claim.

We note 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city must 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. The city may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code, including the victim's fingerprints if the requestor is not a representative of his estate.

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,

A handwritten signature in cursive script that reads "James W. Morris III". The signature is written in dark ink and includes a long horizontal flourish extending to the right.

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

JWM/em

Ref: ID# 406224

Enc: Submitted documents

c: Requestor  
(w/o enclosures)