



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 29, 2011

Ms. Jennifer McClure  
Assistant District Attorney  
Civil Division  
Denton County Criminal District Attorney's Office  
P.O. Box 2850  
Denton, Texas 76202

OR2011-05871

Dear Ms. McClure:

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# 416041.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for the district attorney's files pertaining to two specified cases. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains the fingerprint of the requestor's client. 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]." *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, "[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 requestor has a right of access to his client's fingerprint under section 560.002(1)(A). Therefore, the district attorney must release the fingerprint, which we have marked, under section 560.002 of the Government Code. *See*

Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An 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 is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and "the decision as to what to include in [the file], necessarily reveals the attorney's thought processes

concerning the prosecution or defense of the case.” *Id.* at 380 (quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993)). In this instance, we agree the instant request is for the district attorney’s entire files for the specified cases. You state release of the information at issue reflects the prosecutor’s mental impressions and legal reasoning. Based on your representations and our review of the submitted information, we agree that section 552.108(a)(4) is applicable to the remaining information.

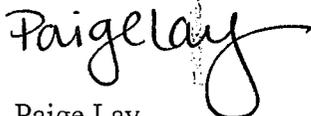
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, with the exception of basic information, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.<sup>1</sup>

In summary, the district attorney must release the requestor’s client’s fingerprint, which we have marked, under section 560.002 of the Government Code. With the exception of basic information, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/bs

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 416041

Enc. Submitted documents

c: Requestor  
(w/o enclosures)