



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2011

Ms. Laura Garza Jimenez
County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2011-09202

Dear Ms. Jimenez:

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# 424034.

The Nueces County Sheriff's Department (the "department") received a request for information pertaining to the arrest of the requestor's client. You state the department does not have some of the requested information.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 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 court filed documents, including magistrate commitment orders, affidavits of indigency, and an instanter warrant, prison-related vouchers and receipts, and other documents that are subject to section 552.022 of the Government Code, which provides in relevant part the following:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(17) information that is also contained in a public court record[.]

Gov't Code 552.022(a)(3), (17). You assert these documents are excepted under sections 552.103 and 552.108 of the Government Code; however, these sections are discretionary exceptions to disclosure that protect a governmental body's interests. *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 Nos. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, sections 552.103 and 552.108 do not constitute other law for purposes of section 552.022(a)(3) or (17). Accordingly, the department may not withhold these documents, which we have marked, under section 552.103 or 552.108, but instead must release them to the requestor.

The submitted information also contains the fingerprints of the requestor's client. Chapter 560 of the Government Code provides a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). The submitted fingerprint information is confidential under section 560.003; however, the requestor has a special right of access to his client's fingerprint information. *See id.* § 560.002(1). Although you assert this information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Attorney General Opinion DM-146 at 3 (1992); *see also* 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). Therefore, the department must release this information, which we have marked, pursuant to section 560.002.

You assert the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure information 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.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information you have marked under section 552.108(a)(1) relates to pending criminal investigations. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *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). Therefore, we agree section 552.108(a)(1) is applicable to the remaining information you have marked under this section.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert the remaining information pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) 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*. Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the remaining information under section 552.108(a)(1) and (a)(2).²

To conclude, the department must release the information marked pursuant to section 552.022 of the Government Code, the fingerprints marked pursuant to section 560.002 of the Government Code, and the basic information in the remaining documents.³

²As we are able to resolve this matter under section 552.108, we do not address your other claims for exception of the information at issue, except to note that basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

³We note basic information includes the arrested person's social security number. 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. The requestor has a right, however, to her client's social security number. *See Gov't Code § 552.023(a)* ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Because the requestor has a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

The department may withhold the remaining information under section 552.108(a)(1) and (a)(2) 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, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 424034

Enc. Submitted documents

c: Requestor
(w/o enclosures)