



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2012

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2012-06880

Dear Ms. Monteros:

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# 454007 (CA-OP-12-105).

The El Paso District Attorney's Office (the "district attorney's office") received a request for information pertaining to cause number 20060D05189. You state some information has been released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You note, and we agree, the submitted information contains the fingerprints 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.*

¹Although you also raise section 552.101 of the Government Code in conjunction with rule 192.5 of the Texas Rules of Civil Procedure, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). We note the proper exception to raise when asserting the work product privilege for information not subject to section 552.022 of the Government Code is section 552.111 of the Government Code. *See* ORDs 676 at 1, 677 (2002).

§ 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). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Although you also seek to withhold the marked fingerprints under section 552.108 of the Government Code, we note the general exceptions to disclosure found in the Act are not applicable to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the district attorney’s office must release the fingerprints you have marked pursuant to section 560.002.

You claim section 552.108 of the Government Code for the remaining information. Section 552.108(a)(1) 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). 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide documentation showing, the information at issue pertains to a pending criminal prosecution. Based on this representation and our review, we conclude the release of the remaining 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).

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*. 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the district attorney’s office may withhold the remaining information under section 552.108(a)(1).

We note basic information includes an arrestee’s social security number. You seek to withhold the requestor’s client’s social security number under section 552.147 of the Government Code. Section 552.147(a) excepts the social security number of a living individual from public disclosure. Gov’t Code § 552.147. However, the requestor has a right of access to information pertaining to his client that would otherwise be withheld on the basis of privacy. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or person’s representative, solely on grounds that information is considered confidential by privacy principles). Because section 552.147 is based on

principles of privacy, the requestor's client's social security number may not be withheld from him.

In summary, the district attorney's office must release the marked fingerprints under section 560.002 of the Government Code. With the exception of the basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.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.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/bhf

Ref: ID# 454007

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of the remaining information.