



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 28, 2013

Mr. Sam Aguirre  
Assistant City Attorney  
City of San Marcos  
630 East Hopkins Street  
San Marcos, Texas 78666

OR2013-15076

Dear Mr. Aguirre:

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# 497792.

The San Marcos Police Department (the "department") received a request for the sex offender reporting history of the requestor's client. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

First, we note the submitted information includes the requestor's client's fingerprints. Section 560.003 of the Government Code 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 a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry"). However, section 560.002 of the Government Code provides 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[.]" *Id.* § 560.002(1)(A). Thus, section 560.002(1)(A) of the Government Code gives an individual or his authorized representative a right of access to his own fingerprints. In this instance, the requestor is the authorized representative of the individual whose fingerprints are at issue. Although you seek to withhold a copy of the requestor's client's fingerprints under section 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 to 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 the requestor's client's fingerprints to him pursuant to section 560.002 of the Government Code.

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 information protected by other statutes, such as article 62.051 of the Code of Criminal Procedure. Article 62.051 requires a sex offender registrant to provide the following information for the Texas Department of Public Safety ("DPS") sex offender registration database: the person's full name; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; each alias; home, work, or cellular telephone number; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; the identification of any online identifier established or used by the person; and any other information required by the department. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number; driver's license number; home, work, or cellular telephone number; the identification of any online identifier established or used by the person; all information required by DPS outside of the enumerated categories of information; and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Thus, the department must withhold or release the information that is subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b). *See* ORDs 613 at 4, 451.

You seek to withhold the remaining information under section 552.108 of the Government Code. 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: (1) 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You provide a representation from the Hays County District Attorney's Office (the "district attorney's office") that the information at issue relates to a pending criminal prosecution for

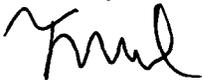
failure to comply with sex offender registration. Based upon the district attorney's office's representation, we conclude section 552.108(a)(1) is applicable to the remaining information. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (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). Thus, the department may withhold the remaining information under section 552.108(a)(1).

In summary, the department must release the requestor's client's fingerprints to him pursuant to section 560.002 of the Government Code. The department must withhold or release the information that is subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b) of the Code of Criminal Procedure. The department may withhold the remaining information under section 552.108(a)(1) 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.texasattorneygeneral.gov/open\\_orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open_orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/dls

Ref: ID# 497792

Enc. Submitted documents

c: Requestor  
(w/o enclosures)