



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2014

Ms. Lizbeth Islas Plaster
City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9002

OR2014-06102

Dear Ms. Plaster:

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# 521804 (City PIR Nos. 14-140, 14-150).

The City of Lewisville (the "city") received two requests for information pertaining to a specified arrest: the first on February 17, 2014 (the "first requestor") and the second on February 26, 2014 (the "second requestor"). The city states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.¹ We have also considered comments submitted by the first requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the information you seek to withhold consists of court-filed documents, which we have marked. Section 552.022(a)(17) of the Government Code provides the following:

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

¹We note the submitted information contains the second requestor'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. Gov't Code § 552.147(b). However, the second requestor has a right to her own social security number. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

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

Gov't Code § 552.022(a)(17). Although you assert the information we have marked under section 552.022(a)(17) is excepted from disclosure under section 552.108, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the information subject to section 552.022 under section 552.108. However, section 552.130 of the Government Code makes information confidential under the Act. Accordingly, we will consider the applicability of section 552.130 to the information subject to section 552.022, as well as the remaining documents.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This section encompasses information protected by other statutes. Some of the information you seek to withhold consists of the second requestor's fingerprints. Chapter 560 of the Government Code provides a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). The second requestor has a right of access to her own fingerprint information pursuant to section 560.002. *See id.* § 560.002(1). Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, as a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the city must release to the second requestor this information, which we have marked, pursuant to section 560.002. Nevertheless, you do not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the marked fingerprints to the first requestor. Accordingly, the city must withhold this information from the first requestor under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.³

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

³As our ruling is dispositive, we do not address your other argument to withhold this information.

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). *See* 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). We note the information you seek to withhold includes a DIC-24 statutory warning and DIC-25 notice of suspension. The copies of these forms were provided to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the city may not withhold the DIC-24 and DIC-25 forms, which we have marked, under section 552.108(a)(1). You state the remaining information you have marked under section 552.108(a)(1) relates to a pending criminal investigation. However, the first requestor asserts this investigation is not pending. Whether a criminal investigation is pending is a question of fact. This office cannot resolve questions of fact in the open records process, but instead must rely on the representations of the governmental body requesting our opinion. *See generally* Open Records Decision Nos. 554 (1990), 552 (1990). Thus, based on the city's representation that the investigation at issue is pending, we conclude the release of the remaining information you have marked under section 552.108(a)(1) 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, the city may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.130(a) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). The remaining information contains motor vehicle record information pertaining to the second requestor. The second requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government

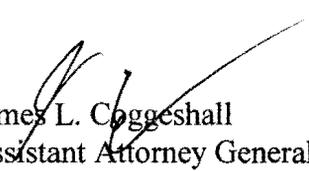
Code. *See id.* § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, the city must withhold this information, which we have marked, from the first requestor under section 552.130 of the Government Code.⁴

To conclude, the city must release to the second requestor the information we have marked under section 560.002 of the Government Code; however, the city must withhold this information from the first requestor under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. With the exception of the information we have marked under section 552.022(a)(17) of the Government Code and the DIC-24 and DIC-25 forms we have marked, the city may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code. The city must withhold from the first requestor the information we have marked under section 552.130 of the Government Code. The city must release the remaining information.

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, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

⁴We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov’t Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

Ref: ID# 521804

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)