



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 3, 2015

Ms. Delietrice Henry  
Open Records Assistant  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2015-04178

Dear Ms. Henry:

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# 560483 (Plano ORR #WHIC012615).

The Plano Police Department (the "department") received a request for information pertaining to a specified incident report. You state the department has released some of the requested information. 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.

Initially, we note the submitted information contains fingerprints whose public availability is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.003 of the Government Code provides, "[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 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, as the individual whose fingerprints are at issue, the requestor has a right of access to her own fingerprints under section 560.002(1)(A). The general exceptions found in the Act, such as section 552.108 of the Government Code, cannot

impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1993), 451 at 4 (1986). Therefore, the department must release the requestor's fingerprints to her pursuant to section 560.002 of the Government Code.

Next, we note that the information you seek to withhold includes the arrestee's breath test results. Section 724.018 of the Transportation Code provides that, on the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. Transp. Code § 724.018. 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). In this instance, the requestor is the person who provided the breath specimen at the request of a peace officer. Therefore, the submitted results of the analysis of the breath specimen must be released to this requestor pursuant to section 724.018 of the Transportation Code.

Section 552.108(a)(1) of the Government Code 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). Generally, a governmental body claiming section 552.108(a)(1) 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 the remaining information relates to a pending criminal investigation and prosecution. Based upon your representation and our review, we conclude that the release of the information at issue 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). Thus, section 552.108(a)(1) is applicable to the remaining submitted 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*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state you have released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

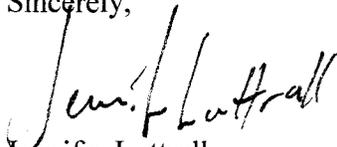
In summary, the department must release the requestor's fingerprints to her pursuant to section 560.002 of the Government Code. The department must release the submitted results

of the analysis of the breath specimen to this requestor pursuant to section 724.018 of the Transportation Code. With the exception of the basic information, which you state you have released, 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/bhf

Ref: ID# 560483

Enc. Submitted documents

c: Requestor  
(w/o enclosures)