



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 13, 2015

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

OR2015-09334

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# 569162 (Plano ORR# VARB040715).

The Plano Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor. You state the department has released some of the requested information to the requestor. 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 representative sample of information.<sup>1</sup>

Initially, we note the submitted information contains fingerprints, the public availability of which 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

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). In this instance, the requestor is the individual whose fingerprints are at issue. Thus, the requestor has a right of access to his 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 him pursuant to section 560.002 of the Government Code.

Next, we note the submitted information includes the breath test results of an individual’s blood alcohol content. Section 724.018 of the Transportation Code provides that “[o]n request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person’s attorney.” Transp. Code § 724.018. The requestor is the person who provided the specimen at the request of a peace officer. Although you claim the information is excepted from disclosure under section 552.108 of the Government Code, a specific right of access provision prevails over the Act’s general exceptions to disclosure. *See* ORD 451 at 4 (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Therefore, the department must release the requestor’s intoxilyzer results, which we have marked, pursuant to section 724.018 of the Transportation Code.

Section 552.108(a) 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[.]” 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* Gov’t Code § 552.301(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 case. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation or prosecution. *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). We note, however, the information at issue includes a “notice to arrested person” form, which we have marked. Because a copy of this form has been provided to the arrestee, we find you have not shown how release of the notice will interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Because the remaining information at issue has not been previously released, we conclude the department has demonstrated release of this information would interfere with the detection, investigation, or prosecution of crime.

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*. See 531 S.W.2d at 186-88; 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 and the marked "notice to arrested person" form, which must be 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 pursuant to section 560.002 of the Government Code and the requestor's intoxilyzer results, which we have marked, pursuant to section 724.018 of the Transportation Code. With the exception of basic information and the marked "notice to arrested person" form, which must be 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 569162

Enc. Submitted documents

c: Requestor  
(w/o enclosures)