



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 10, 2015

Mr. Andrew Wipke
Assistant District Attorney
Wichita County District Attorney's Office
900 Seventh Street
Wichita Falls, Texas 76301-2482

OR2015-11311

Dear Mr. Wipke:

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# 566440 (Wichita County ORR.664).

The Wichita County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the requestor's arrest, charges, booking, housing, discipline, food provided, and release over a specified time period. You state the sheriff's office will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the sheriff's office states it sought clarification of the request for information. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). The sheriff's office states it has not received a response to the request for clarification. Thus, we find the sheriff's office is not required to release information in response to the portion of the request for which the sheriff's office has sought but has not received clarification. However, if the requestor clarifies or narrows the portion of the request for information for which the sheriff's office sought clarification, the

sheriff's office must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this case, as you have submitted information responsive to the request and raised exceptions to disclosure for this information, we will address the applicability of the claimed exceptions to the submitted information.

Next, 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 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 sheriff's office must release the requestor's fingerprints to him pursuant to section 560.002 of the Government 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). 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 release of the remaining information would interfere with further investigation of the requestor. Upon review, we find the sheriff's office has failed to demonstrate how release of the remaining information would interfere with law enforcement or a pending criminal case. Therefore, the sheriff's office may not withhold the any of the remaining information under section 552.108(a)(1) 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 of the Government Code encompasses chapter 411 of the Government Code, which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the

release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find the Federal Bureau of Investigation (“FBI”) number you have marked in the remaining information constitutes CHRI. Thus, the sheriff’s office must withhold the FBI number you have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. However, you have failed to demonstrate how the state identification number you have marked is confidential under federal law or chapter 411 of the Government Code. Thus, the state identification number may not be withheld on that basis under section 552.101.

In summary, the sheriff’s office must release the requestor’s fingerprints to him pursuant to section 560.002 of the Government Code. The sheriff’s office must withhold the FBI number you have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The sheriff’s office must release the remaining information to the requestor.¹

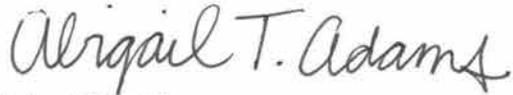
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

¹We note the requestor has a special right of access to some of the information being released in this instance. *See Gov’t Code* § 552.023(a). Because such information is confidential with respect to the general public, if the sheriff’s office receives another request for this information from a different requestor, then the sheriff’s office should again seek a ruling from this office.

[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,

A handwritten signature in black ink that reads "Abigail T. Adams". The signature is written in a cursive style with a large initial 'A' and a long, sweeping underline.

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 566440

Enc. Submitted documents

c: Requestor
(w/o enclosures)