



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 13, 2015

Ms. Sarah Stallberg
Assistant County Attorney
Open Records Division
County of Montgomery
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2015-16705

Dear Ms. Stallberg:

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# 581111 (ORR File No. 15PIA426).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for information related to a specified incident. 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 a fingerprint 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 fingerprint is at issue, the requestor has a right of access to his own fingerprint 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 fingerprint to him pursuant to section 560.002 of the Government 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[.]" 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 information at issue 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, 710 (Tex. 1977).

The sheriff's office states the submitted information relates to a pending criminal prosecution. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *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 citation, which has previously been provided to the arrestee. Because a copy of the citation has previously been released to the arrestee, we find you have not shown how release of the document will interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). As the remaining information at issue has not been previously released, we find the sheriff's office has demonstrated release of this information would interfere with the detection, investigation, or prosecution of crime.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the sheriff's office must release the requestor's fingerprint to him pursuant to section 560.002 of the Government Code. With the exception of the citation and basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code. The sheriff's office must release the citation and basic 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 581111

Enc. Submitted documents

c: Requestor
(w/o enclosures)