



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 18, 2015

Mr. Matthew L. Grove
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd floor
Richmond, Texas 77469

OR2015-17152

Dear Mr. Grove:

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# 575894.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all documents related to the requestor's arrest. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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,

¹We 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 that those records contain substantially different types of information than that submitted to this office.

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 his 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 sheriff’s office must release the requestor’s fingerprints to him pursuant to section 560.002 of the Government Code.

Next, we note the submitted information includes documents signed by a magistrate judge. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record[.]” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). The sheriff’s office seeks to withhold the information at issue under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See id.* § 552.007; *Open Records Decision Nos. 665 at 2 n.5 (2000)* (discretionary exceptions generally), *177 at 3 (1977)* (statutory predecessor to section 552.108 subject to waiver). Therefore, the sheriff’s office may not withhold the court-filed documents, which we have marked, under section 552.108. As the sheriff’s office raises no further exceptions for these documents, the sheriff’s office must release them. We will consider the submitted arguments against disclosure of the remaining information.

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 the information at issue pertains to a criminal case that is currently pending investigation and prosecution. Based on this representation, we conclude the release of the submitted information 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)*. Accordingly, section 552.108(a)(1) is applicable to the remaining information.

We note 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

information held to be public in *Houston Chronicle*, and includes, among other items, the names of arresting and investigating officers. See 531 S.W.2d at 186-87; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the sheriff's office may withhold the information at issue under section 552.108(a)(1) of the Government Code.²

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 [of the Government Code] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You state the basic information contains the identity of an undercover police officer. You state release of this information would subject this officer to a substantial threat of physical harm. Based on your representations and our review, we find you have demonstrated the release of the officer's identity would subject the officer to a substantial threat of harm. Thus, the sheriff's office may withhold the identity of undercover officer within basic information under section 552.152 of the Government Code.

In summary, with the exception of the requestor's fingerprints, documents subject to section 552.022(a)(17) of the Government Code, and basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the name of the undercover officer from within the basic information under section 552.152 of the Government Code. The sheriff's office 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

²As our ruling is dispositive as to this information, we need not address your remaining arguments against disclosure.

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, appearing to read "Mili Gosar", with a long horizontal flourish extending to the right.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 575894

Enc. Submitted documents

c: Requestor
(w/o enclosures)