



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2015

Ms. Stephanie Berry
Assistant City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR2015-20467

Dear Ms. Berry:

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# 587114.

The City of Denton (the "city") received a request for information pertaining to a specified incident. You claim the submitted responsive information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note Exhibit C 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 her fingerprints under section 560.002(1)(A). The general exceptions found in the Act, such as sections 552.103 and 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 city must release the requestor's fingerprints to her pursuant to section 560.002 of the Government Code.

Next, we note Exhibit C includes a court-filed document. 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). Although you seek to withhold this information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); 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 city may not withhold the court-filed document, which we have marked, under section 552.103 or section 552.108. As you have not claimed any other exceptions to disclosure for the court-filed document, the city must release this document. However, we will consider your arguments against disclosure of the remaining information in Exhibit C.

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: (1) 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 city states the remaining information in Exhibit C relates to a pending criminal case. Based on this representation, we conclude the release of this 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests 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 information in Exhibit C.

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, the city may withhold

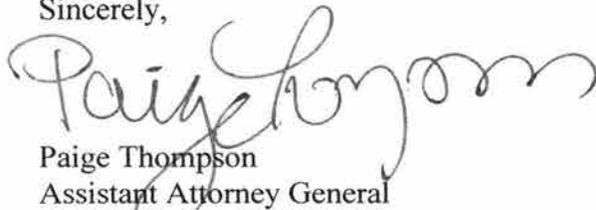
the remaining information in Exhibit C under section 552.108(a)(1) of the Government Code.¹

In summary, the city must release the requestor's fingerprints to her pursuant to section 560.002 of the Government Code. The city must release the marked court-filed document pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the city may withhold the remaining information in Exhibit C 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, 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 587114

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive for this information, we do not address the city's other arguments to withhold this information, except to note basic information generally may not be withheld from public disclosure under section 552.103. See Open Records Decision No. 597 at 2-3 (1991).