



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2015

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2015-25356

Dear Ms. Brown:

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# 589630 (PIR # QUIJ091015).

The Plano Police Department (the "department") received a request for any police reports or restraining orders pertaining to a named person during a specified period. You state you have released some information. 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 Exhibit B contains an individual's fingerprints. 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. This exception encompasses section 560.003 of the Government Code, which provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 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 provides, however, that "[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, in this instance, as the requestor is the authorized representative of the individual to whom the fingerprints belong, the requestor has a right of access to these fingerprints under

section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, the department must release the submitted fingerprints under section 560.002 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information).

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. This section also encompasses section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find Exhibit C consists of files, reports, records, communications, audiotapes, videotapes, and working papers used or developed as a result of an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information at issue is confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold Exhibit C from disclosure under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.108(a)(1) 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). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information in Exhibit B relates to a pending criminal prosecution. Based upon this representation, we conclude the release of the information at issue 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). Thus, section 552.108(a)(1) is applicable to the information at issue.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. The department asserts Exhibit D pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) of the Government Code is applicable to Exhibit D.

However, 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 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, which you state the department has already released, the department may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code and the information in Exhibit D under section 552.108(a)(2) of the Government Code.

In summary, the department must release the fingerprints under section 552.101 of the Government Code in conjunction with section 560.002 of the Government Code. The department must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Thus, with the exception of the basic information, which you state the department has already released, the department may withhold, the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code and the information in Exhibit D under section 552.108(a)(2) 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 589630

Enc. Submitted documents

c: Requestor
(w/o enclosures)