



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 7, 2016

Ms. Delietrice Henry  
Open Records Assistant  
Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2016-20222

Dear Ms. Henry:

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# 625961 (ORR# SLAJ062116).

The Plano Police Department (the "department") received a request for a specified incident report. 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 representative sample of information.<sup>1</sup>

Initially, we note the submitted information contains the fingerprints of the individual who is the subject of the requested incident report. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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). However, section 560.002 provides that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise

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<sup>1</sup>We 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.

disclose the biometric identifier to another person unless . . . the disclosure is made by or to a law enforcement agency for a law enforcement purpose[.]” *Id.* § 560.002(1)(C). The submitted information contains fingerprints subject to section 560.003. However, although we understand the requestor, an examiner at the Federal Bureau of Investigation’s National Instant Criminal Background Check System (“NICS”), is a representative of a law enforcement agency, we are unable to determine if NICS is seeking the information at issue for a law enforcement purpose. Thus, if the requestor is seeking the information at issue for a law enforcement purpose, the requestor has a right of access to the submitted fingerprints. 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). Accordingly, in the event the requestor is seeking the submitted information for a law enforcement purpose, the department must release the submitted fingerprints to the requestor pursuant to subsection 560.002(1)(C). However, if the requestor does not intend to use the fingerprints for a law enforcement purpose, the fingerprints must be withheld under section 552.101 in conjunction with section 560.003.

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 explain how and why 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, and provide documentation showing, the remaining information relates to a pending criminal investigation. We note the remaining information includes a Notice to Arrested Person, which was provided to the offender. You have not explained how releasing information that has been provided to the offender would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the department may not withhold the Notice to Arrested Person under section 552.108(a)(1). However, based on your representation and our review, we find release of the remaining 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 remaining information at issue.

However, section 552.108 of the Government Code 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 basic information and the Notice to Arrested Person, the department may generally withhold the remaining information under section 552.108(a)(1).

However, as noted above, the requestor is an examiner at the NICS and may have a right of access to some of the remaining information. Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] any criminal history record information [“CHRI”] maintained by the [DPS] about a person.” Gov’t Code § 411.089(a); *see also id.* § 411.083(b)(1) (providing DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides, in pertinent part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or subchapter E-1 to obtain from the [DPS CHRI] maintained by the [DPS] that relates to another person is authorized to:

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

*Id.* § 411.087(a)(2). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Thus, the remaining information contains CHRI. A criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Section 411.082 defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” Gov’t Code § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI].” Crim. Proc. Code art. 60.01(1).

Although it appears the NICS is engaged in the administration of criminal justice under chapter 411, we cannot determine whether the requestor intends to use the CHRI for a criminal justice purpose. Consequently, if the department determines the requestor intends to use the CHRI for a criminal justice purpose, we conclude the department must make available to the requestor the CHRI from the remaining information at issue that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* ORD 451 at 4. In that instance, with the exception of basic information and the Notice to Arrested Person, the department may withhold the remaining information at issue under section 552.108(a)(1) of

the Government Code. However, if the department determines the requestor does not intend to use the CHRI for a criminal justice purpose, then the requestor does not have a right of access to the CHRI pursuant to chapter 411. In that instance, with the exception of basic information and the Notice to Arrested Person, the department may withhold the remaining information at issue under section 552.108(a)(1).

In summary, if the requestor is seeking the submitted information for a law enforcement purpose, the department must release the submitted fingerprints to the requestor pursuant to subsection 560.002(1)(C) of the Government Code. However, if the requestor does not intend to use the information for a law enforcement purpose, the fingerprints must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of Government Code. If the department determines the requestor intends to use the CHRI for a criminal justice purpose, the department must make available to the requestor the CHRI from the remaining information at issue that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that instance, with the exception of the basic information and the Notice to Arrested Person, which must be released, the department may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code. If the department determines the requestor does not intend to use the CHRI for a criminal justice purpose, with the exception of the basic information and the Notice to Arrested Person, which must be released, the department may withhold the remaining information at issue 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](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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 625961

Enc. Submitted documents

c: Requestor  
(w/o enclosures)