



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 6, 2017

Mr. Robert G. Schleier, Jr.  
Counsel for the Kilgore Police Department  
Law Office of Robert G. Schleier, Jr.  
116 North Kilgore Street  
Kilgore, Texas 75662

OR2017-00450

Dear Mr. Schleier:

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# 640726.

The Kilgore Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident involving a named individual. 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.

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). Generally, a governmental body claiming section 552.108(a)(1) must 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, 710 (Tex. 1977). You state the submitted information relates to a pending criminal investigation and prosecution. Based upon 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, 186-87 (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, 560-61 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108(a)(1) 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 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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, 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). Section 560.002(1)(A) of the Government Code gives an individual or his authorized representative a right of access to his own 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). In this instance, the requestor may be acting as the authorized representative of the individual whose fingerprints are at issue. Thus, if the requestor is acting as the authorized representative of the individual at issue, she has a right of access to this individual's fingerprints, which we have marked, pursuant to section 560.002(1)(A) of the Government Code, and the marked fingerprints must be released to the requestor. See Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). However, if the requestor is not acting as this individual's authorized representative, she does not have a right of access to the fingerprints we have marked and the department may withhold them under section 552.108(a)(1) of the Government Code.

In summary, with the exception of the basic information, which must be released, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code. If the requestor is acting as the authorized representative of the individual whose fingerprints are at issue, the fingerprints we have marked must be released to the requestor pursuant to section 560.002(1)(A) of the Government Code.

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<sup>1</sup>As our ruling is dispositive, we need not consider the department's remaining argument against disclosure of this 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](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,

A handwritten signature in cursive script that reads "Cole Hutchison".

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

Ref: ID# 640726

Enc. Submitted documents

c: Requestor  
(w/o enclosures)