



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2017

Mr. Dean Stringer
Chief Deputy
Mason County Sheriff's Office
P.O. Box 391
Mason, Texas 76856

OR2017-09891

Dear Mr. Stringer:

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# 662680.

The Mason County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the requestor's arrest. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains fingerprints whose public availability 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). Thus, as the individual whose fingerprints are at issue, the requestor has a right of access to her

¹Although you do not explicitly raise section 552.136 of the Government Code, we understand you to raise this exception based on the substance of your argument.

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 fingerprints to this requestor pursuant to section 560.002 of the Government Code.

Next, we note some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (17). The remaining information includes information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to subsection 552.022(a)(3) and a court-filed document that is subject to subsection 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 and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the information at issue may not be withheld under section 552.108 of the Government Code. The sheriff's office also seeks to withhold the information subject to subsection 552.022(a)(17) under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the sheriff's office may not withhold any of the information subject to section 552.022(a)(17) under section 552.101 in conjunction with common-law privacy. However, because section 552.136 of the Government Code can make information confidential for purposes of section 552.022, we will consider the your argument

under this exception to the information subject to section 552.022. Further, we will consider the sheriff's office's 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 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 pertains to a pending criminal case. Based on your 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.

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 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information protected by section 552.130 of the Government Code or dates of birth. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, you may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, the sheriff's office must withhold the information we marked under section 552.136 of the Government Code.³

In summary, the sheriff's office must release the fingerprints to this requestor pursuant to section 560.002 of the Government Code. The sheriff's office must release the information subject to section 552.022 of the Government Code, which we have marked. With the exception of the basic information, the sheriff's office may withhold the remaining

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

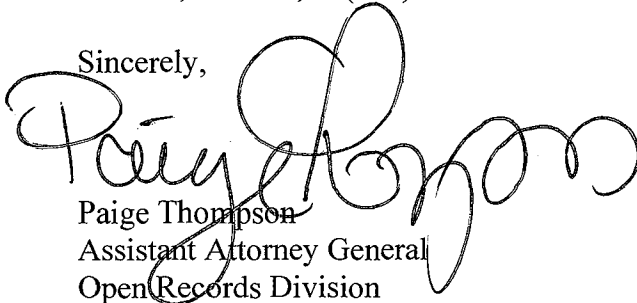
³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information under section 552.108(a)(1) of the Government Code. In releasing the information subject to section 552.022 of the Government Code, the sheriff's office must withhold the information we marked under section 552.136 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,

A handwritten signature in black ink, appearing to read "Paige Thompson", written over the typed name and title.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 662680

Enc. Submitted documents

c: Requestor
(w/o enclosures)