



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 30, 2017

Mr. William T. Little
Assistant County & District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2017-11656

Dear Mr. Little:

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# 666368.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified arrest. 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 information.

Initially, we note the submitted information 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). The sheriff's office seeks to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; 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 sheriff's office may not withhold the court-filed document, which we have marked, under section 552.108. As you raise no other exceptions to disclosure of the marked court-filed document, the sheriff's office must release it to the requestor.

Initially, 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). 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 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 requestor’s fingerprints to her pursuant to section 560.002 of the Government Code.

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 relates to a pending criminal investigation. Based upon this representation and our review, we find 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) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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, which must be released, you may withhold the remaining information under section 552.108(a)(1) of the Government Code.

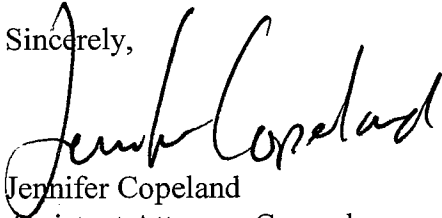
In summary, the sheriff’s office must release the court-filed document, which we have marked, under section 552.022(a)(17) of the Government Code. The sheriff’s office must release the requestor’s fingerprints to her pursuant to section 560.002 of the Government Code. With the exception of basic information, which must be released, the sheriff’s office

may withhold the remaining information pursuant to section 552.108(a)(2) of the Government Code.¹

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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/sb

Ref: ID# 666368

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the sheriff's office must again seek a decision from this office if it receives a request for this information from a different requestor.