



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 5, 2017

Mr. Stephen D. Gates
First Assistant City Attorney
City Attorney's Office
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2017-14903

Dear Mr. Gates:

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# 664661 (ORR# M020575).

The Midland Police Department (the "department") received a request for information pertaining to a specified arrest of a named individual. We understand the department is withholding public citizens' dates of birth pursuant to Open Records Letter No. 2015-24970 (2015).¹ The department states it has released some of the requested information. The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

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

¹Open Records Letter No. 2015-24970 authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

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 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. The department informs us 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 and is seeking the information at issue for a law enforcement purpose. Thus, the requestor has a right of access to the submitted fingerprints pursuant to section 560.002. Accordingly, the department may not withhold the submitted fingerprints from this requestor under section 552.101 of the Government Code in conjunction with section 560.002 of the Government Code.

We note some of the remaining information is subject to section 552.130 of the Government Code.² Section 552.130 provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must release the submitted fingerprints to the requestor pursuant to subsection 560.002(1)(C). The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department must release the remaining information to this requestor.³

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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³The information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

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 "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 664661

Enc. Submitted documents

c: Requestor
(w/o enclosures)