



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 2, 2017

Mr. Matthew L. Grove
Assistant County Attorney
Fort Bend County
401 Jackson Street, Third Floor
Richmond, Texas 77469

OR2017-17294

Dear Mr. Grove:

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# 668979.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the requestor's jailing. You state the sheriff's office will release some information. 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 court-filed documents. 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 documents, which we have marked, under section 552.108. As you have not raised any other exceptions against disclosure of this information, the court-filed documents must be released.

Next, we note the remaining 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). Thus, as the individual whose fingerprints are at issue, the requestor has a right of access to his own 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 him 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). The sheriff’s office states the remaining information relates to an active prosecution. Based on this 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 remaining information.

However, we note 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). Thus, with the exception of the basic information, the sheriff’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, the information we marked under section 552.022(a)(17) of the Government Code must be released. The sheriff’s office must release the requestor’s fingerprints to him

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

pursuant to section 560.002 of the Government Code. Except for basic information, which must be released, the sheriff's office may withhold the remaining information 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, 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 668979

Enc. Submitted documents

c: Requestor
(w/o enclosures)