



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 16, 2017

Ms. June B. Harden
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2017-23571

Dear Ms. Harden:

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# 679806 (PIR No. 17-47255).

The Office of the Attorney General (the "OAG") received a request for a specified investigation and related video recordings. The OAG states it will release basic information in accordance with section 552.108(c) of the Government Code. *See* Gov't Code § 552.108(c). The OAG claims the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information may consist of grand jury documents. The judiciary is expressly excluded from the requirements of the Act. *Id.* § 552.003(1)(B). This office has determined for Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). Thus, to the extent the OAG holds the information at issue as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act and the OAG is not required to release that information in response to the instant request. To the extent the OAG does not hold the information at issue as an agent of the grand jury, we will address the OAG's argument against its disclosure.

Next, 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, the requestor has a right of access to his 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 OAG must release the fingerprints to this requestor pursuant to section 560.002 of the Government Code.

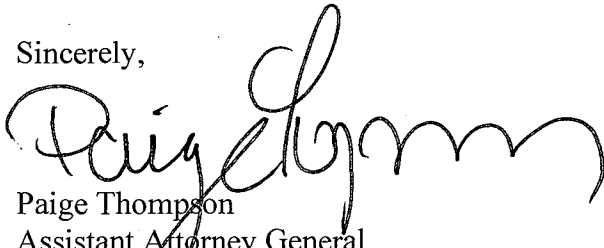
Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The OAG states the information at issue pertains to a concluded criminal investigation by the OAG's Criminal Prosecutions Division. The OAG explains the grand jury no-billed the case and the prosecution is concluded. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to the information at issue. Accordingly, the OAG may withhold the remaining information at issue under section 552.108(a)(2) of the Government Code.

In summary, to the extent the OAG holds the information at issue as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act and the OAG is not required to release that information in response to the instant request. The OAG must release the fingerprints belonging to the requestor pursuant to section 560.002 of the Government Code. The OAG may withhold the remaining information at issue under section 552.108(a)(2) 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 679806

Enc. Submitted documents

c: Requestor
(w/o enclosures)