



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 25, 2019

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2019-05289

Dear Ms. Lary:

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# 758763.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for fingerprints pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor only seeks the named individual's fingerprints. Accordingly, the remaining submitted information is not responsive to the instant request. The sheriff's office need not release non-responsive information in response to this request, and this ruling will not address that information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to

CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Upon review, we find you have failed to demonstrate how any portion of the responsive information constitutes CHRI for purposes of chapter 411. Accordingly, none of the responsive information may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also 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). Section 560.002 provides, however, 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 individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). We note the purpose of sections 560.001, 560.002, and 560.003 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, biometric identifiers that pertain to a deceased individual may not be withheld under section 552.101 of the Government Code on that basis. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S. W.2d 489,491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). The responsive information reflects the individual whose fingerprints are at issue is deceased. Therefore, this information is not confidential under section 560.003 of the Government Code, and the sheriff’s office may not withhold it under section 552.101 of the Government Code on that ground. As no other exceptions to disclosure are raised, the sheriff’s office must release the responsive information.

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 that reads "Britni Ramirez". The signature is written in a cursive style with a large, looping "R" at the end.

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/sb

Ref: ID# 758763

Enc. Submitted documents

c: Requestor
(w/o enclosures)