



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 9, 2020

Mr. Michael Bloch
Deputy District Attorney
Ector County District Attorney's Office
300 North Grant, Suite 305
Odessa, Texas 79761

OR2019-27147A

Dear Mr. Bloch:

This office issued Open Records Letter No. 2019-27147 (2019) on September 27, 2019. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on September 27, 2019. *See* Gov't Code §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2019-27147 and serves as the correct ruling. *See generally id.* § 552.011 (Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 809631.

The Ector County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified homicide. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also state you notified the Texas Department of Public Safety (the "DPS") of the requests and of the opportunity to submit comments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from DPS. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the some of the submitted information consists of 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). Although the district attorney's office and DPS raise section 552.108 of the Government Code for this information, this exception is discretionary in nature and does not make information confidential under the Act. Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5, 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the district attorney's office may not

withhold any of the court-filed documents under section 552.108 of the Government Code. However, you also claim section 552.101 of the Government Code, which makes information confidential under the Act. Therefore, we will address the applicability of section 552.101 to the information subject to section 552.022(a)(17). We will also address your argument under section 552.108 for the remaining information not subject to section 552.022.

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 of the Government Code also encompasses section 560.003 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *See id.* § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Upon review, we find the district attorney’s office must withhold the fingerprint we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The district attorney’s office must release the remaining information we marked pursuant to section 552.022(a)(17) 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body may withhold the information under section 552.108(a)(1) if it demonstrates the information relates to the pending case and this office is provided with a representation from the law enforcement agency that the law enforcement agency wishes to withhold the information.

DPS states the remaining information is related to an active criminal investigation. Further, DPS objects to disclosure of the information at issue because its release would interfere with the investigation of the case. Based on these representations, we conclude the district attorney’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of DPS. *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).

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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also Open Records Decision No. 127 (1976)* (summarizing types of

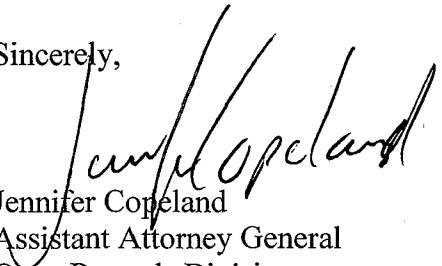
information considered to be basic information). Thus, with the exception of the basic information, which must be released, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of DPS.

In summary, the district attorney's office must withhold the fingerprint we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The district attorney's office must release the remaining information we marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the district attorney'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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/gw

Ref: ID# 809631

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)