



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 16, 2019

Mr. Juan A. Roque
Assistant District Attorney
Bexar County Criminal District Attorney's Office
101 W. Nueva Street, 7th Floor
San Antonio, Texas 78205

OR2019-35431

Dear Mr. Roque:

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# 801867(File No. 7910; ME 19-1396).

The Bexar County Medical Examiner's Office (the "medical examiner's office") received a request for information pertaining to a specified autopsy. 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 a deceased individual's fingerprints. The public availability of fingerprints is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.003 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, 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 requestor may be the authorized representative of the deceased individual's estate. Although the medical examiner's office seeks to withhold the fingerprints at issue under section 552.108 of the Government Code, we note a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos.

613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, if the requestor is acting as the authorized representative of the deceased individual's estate, then she has a special right of access to the fingerprints pursuant to section 560.002(1)(A) of the Government Code, and the fingerprints must be released to this requestor.

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). Generally, 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, 710 (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 has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You indicate the San Antonio Police Department (the “department”) objects to release of the information at issue because the information relates to an ongoing criminal investigation being conducted by the department. Based upon this representation, the submitted documentation, and our review, we conclude the release of this information 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, 186-87 (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, 560-61 (Tex. 1976). Accordingly, the medical examiner’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the department.

In summary, if the requestor is acting as the authorized representative of the deceased individual’s estate, the department must release the deceased individual’s fingerprints pursuant to section 560.002(1)(A) of the Government Code. The remaining information may be withheld under section 552.108(a)(1) of the Government Code on behalf of the department.

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,

A handwritten signature in black ink, appearing to read "Ramsey Abarca", with a long, sweeping horizontal stroke extending to the right.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/rm

Ref: ID# 801867

Enc. Submitted documents

c: Requestor
(w/o enclosures)