



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 31, 2006

Ms. Carla M. Cordova  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2006-05701

Dear Ms. Cordova:

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# 250303.

The Texas Department of Criminal Justice (the "department") received a request for the requestor's records. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because sections 552.101 and 552.134 of the Government Code can provide compelling reasons to withhold information, we will address your arguments concerning these exceptions.

Section 552.134 of the Government Code relates to information about inmates and former inmates of the department and provides the following:

- (a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134. You inform us that the submitted information pertains to a former inmate who was confined in a facility operated by the department. Based on this representation, we agree that the submitted information is subject to section 552.134. Furthermore, after reviewing the submitted information, we conclude that none of it is subject to release under section 552.029 of the Government Code.

Generally, all information subject to section 552.134 of the Government Code must be withheld. However, in this instance, the submitted information contains the requestor's fingerprints. Access to fingerprint information is governed by section 560.002 of the Government Code, which provides as follows:

A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

*Id.* § 560.002. Under this provision, the requestor would have a right of access to his fingerprints. Accordingly, there is a conflict of laws between section 552.134 and section 560.002. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex.

Crim. App.1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 593 (1991), 583 (1990), 451 (1986). In this instance, section 560.002 is more specific than the general confidentiality provision in section 552.134. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision). Therefore, the submitted fingerprints must be released to the requestor. The remaining information must be withheld under section 552.134 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

This letter ruling is limited to the particular records 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 records or any other circumstances

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'JAP', written over a horizontal line.

James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/sdk

Ref: ID# 250303

Enc. Submitted documents

c: Mr. David Lee Campbell  
809 Majorca  
Houston, Texas 77076  
(w/o enclosures)