



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2007

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OR2007-06521

Dear Mr. Frazier and Mr. West:

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# 280476.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a named inmate of the department and a named correctional officer. The Office of the Inspector General (the "OIG") informs us that it will release some of the requested information, except for information that the department is authorized to withhold under sections 552.117 and 552.147 of the Government Code.<sup>1</sup> Both the OIG and the Office of the General Counsel (the "OGC") have submitted information that the department seeks

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<sup>1</sup>See Open Records Letter No. 2005-01067 (2005) (authorizing department to withhold information relating to its current or former employees under Gov't Code § 552.117(a)(3) without necessity of requesting attorney general decision); Gov't Code § 552.147(b) (authorizing governmental body to redact living person's social security number from public release under Gov't Code § 552.147 without necessity of requesting attorney general decision under Act).

to withhold under sections 552.101, 552.103, 552.108, and 552.134 of the Government Code.<sup>2</sup> We have considered the claimed exceptions to disclosure and have reviewed the submitted information.

Initially, we address the OIG's representation that some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2007-02470 (2007). We note, however, that the underlying law, facts, and circumstances of the department's request for this ruling are not the same as those on which the previous ruling is based. See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). Therefore, the department may not rely on Open Records Letter No. 2007-02470 in disposing of any of the submitted information. Accordingly, we will consider your arguments with regard to the public availability of all of the submitted 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. This exception encompasses information that other statutes make confidential. The OGC raises section 552.101 in conjunction with section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division [of the department] subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

*Id.* § 508.313(a); *see also id.* § 508.001(9) ("releasee" means person released on parole or to mandatory supervision). You state that some of the submitted information relates to a releasee. You state that the requestor does not represent an eligible entity that is authorized

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<sup>2</sup>As the OGC acknowledges, this office ruled on information relating to the correctional officer and certain inmates in Open Records Letter No. 2007-02548 (2007). We assume that the department has complied with that ruling.

to obtain the information in question under section 508.313(c). *See id.* § 508.313(c)-(d).<sup>3</sup> You also state that none of the information is subject to chapter 62 of the Code of Criminal Procedure or section 552.029 of the Government Code. *See id.* § 508.313(e)-(f).<sup>4</sup> Based on your representations, we conclude that the department must withhold the information that we have marked under section 508.313 of the Government Code.

The OGC's information also includes a medical record that is confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). As an attorney for the individual who is the subject of the submitted medical record, the requestor may have a right of access to it. We have marked the medical record that must be withheld under the MPA, unless the department receives written consent for the release of that information that complies with sections 159.004 and 159.005 of the MPA. *See* Open Records Decision No. 598 (1991).

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<sup>3</sup>Section 503.313(c) provides for the release of information that is confidential under section 508.313(a) to the governor, a member of the board of pardons and paroles or a parole commissioner, the criminal justice policy council, or an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose. Section 508.313(d) provides that "eligible entity" means a government agency, an organization with which the Department of Criminal Justice contracts or an organization to which the department provides a grant, or an organization to which inmates are referred for services by the department.

<sup>4</sup>Section 508.313(e) provides that section 508.313 does not apply to information relating to a sex offender that is authorized for release under chapter 62 of the Code of Criminal Procedure. Section 508.313(f) provides that section 508.313 does not apply to information that is subject to required public disclosure under section 552.029 of the Government Code.

The OGC's documents also include mental health records that are confidential under section 611.002 of the Health and Safety Code. Section 611.002 provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining "patient" and "professional"). We have marked information relating to one of the requestor's clients that is confidential under section 611.002. We note that sections 611.004 and 611.0045 provide for access to that information only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). Therefore, the department must withhold the marked information under section 611.002 of the Health and Safety Code, unless the requestor has a right of access under sections 611.004 and 611.0045.

The OGC's documents also contain a fingerprint of one of the requestor's clients. The public availability of fingerprints is governed by chapter 560 of the Government Code. *See Gov't Code* §§ 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), 560.003 (biometric identifier in possession of governmental body is exempt from disclosure under Act). 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). Thus, the requestor has a right of access to his client's fingerprint under section 560.002(1)(A). *See Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning himself). Although the department seeks to withhold the fingerprint under section 552.134 of the Government Code, the exceptions to disclosure found in the Act are generally not applicable to information that other statutes make public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989)*. Therefore, the department must release the fingerprint that we have marked under section 560.002 of the Government Code.

Next, we address section 552.134 of the Government Code. Section 552.134 is applicable to information relating to inmates of the department and states that

[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is exempt from [required public disclosure] 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(a). Section 552.029 of the Government Code provides in part that

[n]otwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

(1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

*Id.* § 552.029(1), (8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

We conclude that section 552.134(a) is generally applicable to the remaining information submitted by the OGC and all of the information submitted by the OIG. We note, however, that the OGC's information includes department photographs of an inmate. The photographs that we have marked must be released under section 552.029(1). Moreover, some of the OGC's records and all of the OIG's records relate to alleged crimes involving inmates. The department must release basic information about those incidents under section 552.029(8). The basic information that must be released includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. With the exception of the information that must be released under section 552.029, the department must withhold the remaining information under section 552.134.<sup>5</sup>

In summary: (1) the department must withhold the marked information that is confidential under section 508.313 of the Government Code; (2) the department must withhold the marked medical record under the MPA unless it receives written consent for the release of that information that complies with sections 159.004 and 159.005 of the MPA; (3) the department must withhold the marked information that is confidential under section 611.002 of the Health and Safety Code unless the requestor has a right of access under sections 611.004 and 611.0045; (4) the marked fingerprint must be released under section

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<sup>5</sup>As we are able to make this determination, we need not address the OIG's claim under section 552.108 of the Government Code, except to note that basic information under section 552.029(8) corresponds to the basic information that must be released under section 552.108(c). We also note that section 552.103, which the OIG also raises, generally does not except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).

560.002 of the Health and Safety Code; and (5) except for the photographs and basic information that must be released under section 552.029 of the Government Code, the department must withhold the rest of the submitted information under section 552.134 of the Government Code. As we are able to make these determinations, we need not address the department's other arguments against disclosure.<sup>6</sup>

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

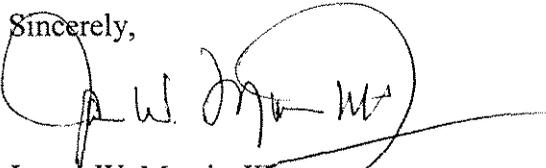
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<sup>6</sup>We note that some of the information that must be released under section 552.029(8) would ordinarily be protected from disclosure by common-law privacy under section 552.101. In this instance, however, the requestor has a right of access to that information under section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4. Should the department receive another request for these same records from a person who would not have a right of access to the private information, the department should resubmit these records and request another ruling. See Gov't Code §§ 552.301(a), .302.

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 "J.W. Morris, III", with a large, circular flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 280476

Enc: Submitted documents

c: Mr. Donald L. Crook, Jr.  
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(w/o enclosures)