



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2008

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2008-15550

Dear Ms. Armstrong:

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# 327648.

The Dallas Police Department (the "department") received a request for all documents in the custody, control, or possession of the sex offender registration division pertaining to a named individual. You claim the requested information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note one of the submitted documents does not pertain to the individual named in the request. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The submitted records pertain to a juvenile convicted of indecency with a child. However, we note the submitted records are sex offender registration records governed by chapter 62 of the Code of Criminal Procedure. Section 58.007(a)(3) states “this section does not apply to a record or file relating to a child that is . . . subject to disclosure under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997.” *Id.* § 58.007(a)(3). Therefore, we find section 58.007 does not apply to the requested records.

Section 552.101 also encompasses article 62.051 of the Code of Criminal Procedure, which requires a sex offender registrant to provide the following information for the Department of Public Safety (“DPS”) sex offender registration database: the person’s full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver’s license number; shoe size; home address; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any other information required by DPS. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person’s social security number, driver’s license number, telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b).

You claim the submitted fingerprint is confidential under chapter 560 of the Government Code, which is also encompassed by section 552.101. Section 560.003 provides that “[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). As previously noted, some of the requested information, including a fingerprint, is specifically made public by article 62.005(b) of the Code of Criminal Procedure. Thus, we must address the conflict between the access provided by article 62.005(b) and the confidentiality provided under section 560.003. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more

general”); *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. 598 (1991), 583 (1990), 451 (1986). In this instance, article 62.005(b) specifically provides access only to certain categories of information found within sex offender registration records, while section 560.003 generally excepts all biometric identifier information maintained in any context. Thus, we conclude the access to certain types of sex offender registration information provided under article 62.005(b) of the Code of Criminal Procedure is more specific than the general confidentiality provided under section 560.003 of the Government Code. Consequently, the department may not withhold the submitted fingerprint under section 560.003 of the Government Code. Accordingly, the department must withhold or release the requested information in accordance with article 62.005(b) of the Code of Criminal Procedure.²

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge that decision by suing the governmental

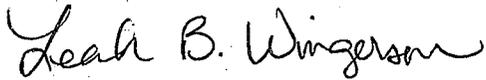
² As our ruling is dispositive, we need not address your remaining arguments against disclosure of the named individual's driver's license number and social security number.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 327648

Enc. Submitted documents

c: Mr. Daniel Paz
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(w/o enclosures)