



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 9, 2009

Ms. Patricia Fleming
Assistant General Counsel
TDCJ- Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-01709

Dear Ms. Fleming:

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# 334265.

The Texas Department of Criminal Justice (the "department") received a request for the requestor's entire parole file. You state that non-confidential, responsive information will be released to the requestor. You claim that the submitted 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 that a portion of the submitted information, which we have marked, is not responsive to the instant request because it does not pertain to the requested parole file. The department need not release nonresponsive information in response to this request and this ruling will not address that 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. Section 552.101 encompasses section 508.313 of the Government Code, which provides in part:

- (a) All information obtained and maintained [by the Texas Department of Criminal Justice], 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 Texas Department of Criminal Justice] 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.

Gov't Code § 508.313(a); *see also id.* § 508.001(9) ("releasee" means a person released on parole or to mandatory supervision). You assert that the responsive submitted information originated from the department's Parole Division and relates to an individual who was subject to release on parole, a releasee, and was directly identified in a proposed plan of release for an inmate. After reviewing the department's arguments and the submitted information, we agree that this information is subject to section 508.313. You state that the requestor is not an entity authorized to obtain the submitted information under section 508.313(c). This information is also not made public under section 552.029 of the Government Code. *See id.* § 508.313(f). We therefore conclude that the responsive submitted information is generally confidential under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

However, we note that the submitted documents contain fingerprints of the requestor. 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 own fingerprints 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 fingerprints 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).

However, as noted above, the submitted information also falls under section 508.313 of the Government Code. Thus, the instant situation presents a conflict between section 508.313 of the Government Code and section 560.002 of the Government Code. However, where information falls within both a general and a specific statutory provision, the specific

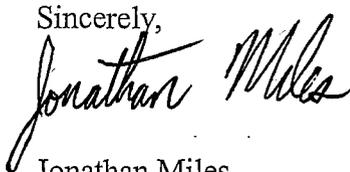
provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App.1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). In this instance, the public availability provision of section 560.002 of the Government Code is more specific than the general confidentiality provisions of section 508.313 of the Government Code. Accordingly, section 560.002 more specifically governs the public availability of the submitted fingerprints and prevails over the more general confidentiality provisions of section 508.313. *See Lufkin v. City of Galveston*, 63 Tex. 437 (1885) (when two sections of an act apply, and one is general and the other is specific, then the specific controls); *see also* Gov't Code §§ 311.025(a) (if statutes enacted at same or different sessions of legislature are irreconcilable, statute latest in date of enactment prevails), 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision). We therefore conclude that the fingerprints that we have marked must be released to the requestor under section 560.002 of the Government Code.

Therefore, the department must release the fingerprints that we have marked under section 560.002 of the Government Code. The remaining responsive information must be withheld under section 508.313 of the Government Code.¹

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 334265

Enc. Submitted documents

c: Requestor
(w/o enclosures)