



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 1, 2010

Mr. John C. West  
General Counsel  
Office of Inspector General  
Texas Department of Criminal Justice  
4616 Howard Lane, Suite 250  
Austin, Texas 78728

OR2010-07905

Dear 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# 381180.

The Texas Department of Criminal Justice's Office of the Inspector General (the "OIG") received a request for information pertaining to an investigation of the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, 552.130, 552.134, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains the requestor's fingerprints. 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 560.003 of the Government Code, which 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). 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). In this instance, the requestor

has a right of access to his own fingerprints. *See id.* § 560.002(1); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, we find that the OIG may not withhold the fingerprints we have marked, but must release them to the requestor pursuant to section 560.002(1)(A). *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

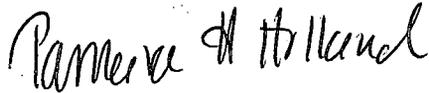
Next, section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered to be intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the submitted documents indicate the requestor knows the identity of the victim. Thus, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the victim's privacy, the remaining submitted information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the fingerprints we have marked must be released pursuant to section 560.002(1)(A) of the Government Code. The remaining submitted information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As our ruling is dispositive, we need not address your remaining arguments.

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](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, toll free at (888) 672-6787.

Sincerely,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/jb

Ref: ID# 381180

Enc. Submitted documents

c: Requestor  
(w/o enclosures)