



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 16, 2010

Ms. Amy L. Currier  
Public Information Officer  
Texas Funeral Service Commission  
P.O. Box 12217 Capitol Station  
Austin, Texas 78711

OR2010-08822

Dear Ms. Currier:

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# 383041.

The Texas Funeral Service Commission (the "commission") received a request for information relating to complaints against the requestor. You state the commission has released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We first note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information.<sup>1</sup> The commission obtained some of the submitted information, which we have marked, after the date of its receipt of this request for information. Thus, because the marked information was not in the commission's possession when it received this request, it is not responsive to the request. The commission need not release nonresponsive information and this decision does not address the public availability of that information.

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<sup>1</sup>See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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. You raise section 552.101 in conjunction with section 651.203 of the Occupations Code. Section 651.203(b) provides that "[i]nformation in a [complaint file maintained by the commission], other than information relating to a complaint that has not reached a final disposition, is public information." Occ. Code § 651.203(b). We conclude that this language makes information relating to a complaint that has not reached a final disposition confidential. You state that the responsive information relates to an open complaint that remains under investigation. Based on your representations and our review of the information at issue, we conclude that the responsive information is generally confidential under section 552.101 of the Government Code in conjunction with section 651.203(b) of the Occupations Code.

However, we note the responsive information contains the requestor's fingerprints. Fingerprints are governed by chapter 560 of the Government Code. Access to fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.001 provides in part that "[i]n this chapter . . . '[b]iometric identifier' means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." Gov't Code § 560.001(1). Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. 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). Sections 560.001, 560.002, and 560.003 are intended to protect the privacy of a living individual to whom a fingerprint or other biometric identifier pertains. Thus, section 560.002(1)(A) of the Government Code gives an individual a right of access to his own fingerprint information.

Generally, information relating to a complaint that has not reached a final disposition is confidential under section 651.203(b) of the Occupations Code and must be withheld in its entirety under section 552.101 of the Government Code. However, because this requestor has a special right of access to his own fingerprints, which we have marked, we find there is a conflict of laws between section 651.203(b) of the Occupations Code and section 560.002 of the Government Code. 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, sections 560.002 and 560.003 of the Government Code are more specific than the general confidentiality provision in section 651.203(b) of the Occupations Code. Thus, the statutory right of access granted by section 560.002 prevails over the more general confidentiality provision of section 651.203(b). *See Luftin 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 § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision). Therefore, the requestor's fingerprints, which we have marked, are subject to section 560.002 of the Government Code and must be released to him. The remaining responsive information must be withheld under section 552.101 in conjunction with section 651.203(b) of the Occupations Code.<sup>2</sup>

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 383041

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.