



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2010

Mr. James Mu
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2010-11845

Dear Mr. Mu:

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# 389428.

The Texas Department of Criminal Justice (the "department") received a request for all information in the requestor's department files and all information pertaining to the requestor during specified dates. You state some information has been or will be made available to the requestor. You claim the submitted records are 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you acknowledge, and we agree, the department failed to request a ruling within the statutory time period prescribed by section 552.301(b) of the Government Code. *See id.* § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records

Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. *See* Open Records Decision No. 150 (1977). Because sections 552.101 and 552.134 of the Government Code can provide compelling reasons for non-disclosure, we will consider the applicability of those exceptions.

Next, we note the submitted records contain the 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 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 fingerprint information under 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 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the department must release the submitted fingerprints, which we have marked, under section 560.002 of the Government Code.

Section 552.134 of the Government Code, which relates to inmates and former inmates of the department, provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 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). Upon review, we agree the remaining information is information about an individual confined as an inmate in a facility operated by the department and is, therefore, subject to section 552.134. We find the exceptions in section 552.029 are not applicable in this instance. Therefore, the department must withhold the remaining information under section 552.134(a) of the Government Code.¹

In summary, the department must release the submitted fingerprints, which we have marked, under section 560.002 of the Government Code.² The department must withhold the remaining information under section 552.134(a) of the Government Code.

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

²We note the requestor has a special right of access to the information being released in this instance. *See* Gov't Code § 560.002. Accordingly, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

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

Sincerely,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/em

Ref: ID# 389428

Enc. Submitted documents

c: Requestor
(w/o enclosures)