



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 8, 2010

Ms. Michelle L. Villarreal  
Assistant City Attorney  
City of Waco  
Legal Services  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2010-15437

Dear Ms. Villarreal:

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# 396446 (Waco Reference No. LGL-10-1050).

The Waco Police Department (the "department") received a request for paperwork indicating the requestor's discharge from duties to register as a sex offender. You claim 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 submitted information.

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. We note that section 58.007 is inapplicable in this instance because the juvenile conduct at issue occurred prior to September 1, 1997. However, former section 51.14 of the Family Code may be applicable to this information. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by the former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Former section 51.14 provided in relevant part as follows:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14 (repealed 1995). In this instance, the submitted information concerns juvenile delinquent conduct that occurred prior to January 1, 1996. *See id.* § 51.03 (defining “delinquent conduct”). Thus, the submitted information is generally confidential under former section 51.14(d) of the Family Code. *See id.* § 51.04(a) (title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by a child).

We note, however, that the submitted information contains the requestor’s fingerprint. 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). Thus, section 560.002(1)(A) of the Government Code gives an individual or his authorized representative a right of access to his own fingerprint information.

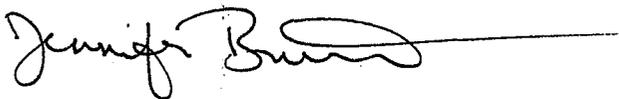
Generally, law enforcement records involving juvenile delinquent conduct that occurred prior to January 1, 1996 are confidential under section 51.14(d) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code. However, because this requestor has a special right of access to his fingerprint information, which we have marked, we find there is a conflict of laws between section 51.14(d) of the Family 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). In this instance, because sections 560.002 and 560.003 of the Government Code address biometric identifiers only, they are more specific than the general confidentiality provision in section 51.14(d) of

the Family Code. Thus, the statutory right of access granted by section 560.002 prevails over the more general confidentiality provision of section 51.14(d). *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 § 311.026 (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 marked fingerprint must be released to him under section 560.002 of the Government Code.<sup>1</sup> The department must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 51.14(d) of the Family Code.

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 Burnett  
Assistant Attorney General  
Open Records Division

JB/em

Ref: ID# 396446

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>Because this requestor has a special right of access to information being released, in the event the department receives another request for this information from someone without such a right of access, the department must against ask this office for a ruling.