



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2011

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

OR2011-07362

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# 419392.

The Texas Department of Criminal Justice (the “department”) received a request for the requestor’s entire inmate file, including parole information. You state you have released or will release some information to the requestor. You claim the submitted information is exempted 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 the submitted information contains the requestor’s fingerprints. 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, “[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 her fingerprints 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).

You also seek to withhold the requestor’s fingerprints under section 508.313 of the Government Code. Section 508.313 is encompassed by section 552.101 of the Government Code, which exempts from disclosure “information considered to be confidential by law,

either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 508.313 provides in part:

(a) All information obtained and maintained, 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 department] 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.

*Id.* § 508.313(a). You state, and our review confirms, the requestor’s fingerprints are contained in documents that originated from the department’s Parole Division’s file on an inmate and were generated while the inmate was “an inmate of the institutional division subject to release to mandatory supervision, or parole or executive clemency.” We therefore agree section 508.313 is also applicable to the fingerprints at issue. Thus, the instant situation presents a conflict between section 508.313 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). In this instance, 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 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 general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision). Therefore, the department must release the fingerprints we have marked under section 560.002 of the Government Code.

Section 552.134 of the Government Code relates to information about inmates of the department. This exception provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] 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). You assert the information at issue consists of information about an inmate confined in a facility operated by the department. Upon review, we agree the submitted information is subject to section 552.134. We find the exceptions set forth in section 552.134(b) and section 552.029 are not applicable in this instance. Therefore, the department must withhold the remaining information under section 552.134 of the Government Code.

In summary, the department must release the fingerprints we have marked under section 560.002 of the Government Code to this requestor.<sup>1</sup> The department must withhold the remaining information under section 552.134 of the Government 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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 419392

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the requestor has a special right of access to the information being released. See Gov't Code § 560.002. If the department receives another request for this same information from a different requestor, the department should again seek a decision from this office.