



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2011

Ms. Patricia Fleming
Assistant General Counsel
Texas Department of Criminal Justice
Office of the General Counsel
P.O. Box 4004
Huntsville, TX 77342-4004

OR2011-08792

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# 421753.

The Texas Department of Criminal Justice (the "department") received a request for records relating to the 2006 incarceration of a named individual. You claim the submitted information is 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.

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 information protected by other statutes, such as section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained [by the department], 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); *see id.* § 508.001(9) (“releasee” means a person released on parole or to mandatory supervision). You indicate one of the submitted documents, which you have marked, constitutes a parole record that is maintained by the department’s parole division and relates to a releasee. Upon review, we find the information you have marked relates to a releasee and is subject to section 508.313 of the Government Code. The requestor in this instance is not authorized to obtain the information at issue under section 508.313(c). Further, this information is not made public under section 552.029 of the Government Code. *See id.* § 508.313(f). Accordingly, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.¹

Next, we note the remaining information contains the fingerprint of the individual named in the request. The public availability of fingerprints is governed by chapter 560 of the Government Code. *See id.* §§ 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .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). Therefore, if the requestor is the authorized representative of the individual named in the request, the department must release the fingerprint we have marked to this requestor under section 560.002 of the Government Code. *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).* If the requestor is not the authorized representative of the individual named in the request, then we will consider your arguments against the disclosure of this information, as well as the remaining submitted information.

Next, you claim the remaining information is excepted from disclosure under section 552.134 of the Government Code. Section 552.134 relates to department inmates and 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 [department] is excepted from [required public disclosure] if it is information about an

¹As our ruling on this issue is dispositive, we do not address your remaining arguments against disclosure of this information.

inmate who is confined in a facility operated by or under a contract with the department.

Id. § 552.134(a). Upon review, we agree the remaining submitted information is related to a former inmate of the department. We note none of the information at issue is subject to release under section 552.029 of the Government Code. *See id.* § 552.029. Accordingly, the department must withhold the remaining submitted information pursuant to section 552.134 of the Government Code.²

In summary, the department must withhold the document you have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. If the requestor is the authorized representative of the individual at issue, the department must release the fingerprint we have marked pursuant to section 560.002(1)(A) of the Government Code. The department must withhold the remaining submitted information under section 552.134 of the Government Code.

Finally, you ask this office to issue a previous determination permitting the department to withhold “the Pen Packet/Statement of Fact Form” under section 552.134 of the Government Code and the “Pre-Sentence Investigation” under sections 552.101 and 552.134 of the Government Code without requesting a ruling from this office. We decline to issue such a previous determination at this time. Accordingly, 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/bs

²As our ruling is dispositive, we do not address your remaining arguments against disclosure.

Ref: ID# 421753

Enc. Submitted documents

c: Requestor
(w/o enclosures)