



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2011

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

OR2011-10800

Dear Ms. Towe:

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# 425123.

The Texas Department of Criminal Justice (the "department") received a request for all disciplinary and classification records pertaining to the requestor. You state some information has been or will be made available to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 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. This exception encompasses information that other statutes make confidential. Article 42.12 of the Code of Criminal Procedure is applicable to pre-sentence investigation reports and provides in part:

(j) The judge by order may direct that any information and records that are not privileged and that are relevant to a report required by Subsection (a) or Subsection (k) of this section be released to an officer conducting a presentence investigation under Subsection (i) of this section or a

postsentence report under Subsection (k) of this section. The judge may also issue a subpoena to obtain that information. A report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), (h), (k), and (l) of this section and as directed by the judge for the effective supervision of the defendant. Medical and psychiatric records obtained by court order shall be kept separate from the defendant's community supervision file and may be released only by order of the judge.

Crim. Proc. Code art. 42.12 § 9(j). Accordingly, the department must withhold the presentence investigation report you have marked pursuant to section 552.101 in conjunction with article 42.12 of the Code of Criminal Procedure.

Next, we note the remaining 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), .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, to this requestor under section 560.002 of the Government Code.

You claim the remaining information is excepted from disclosure under section 552.134(a) of the Government Code, which relates to inmates of the department and provides in relevant part:

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 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 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

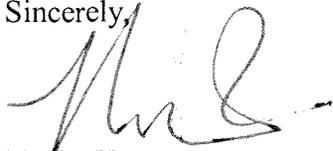
department must withhold the remaining information under section 552.134 of the Government Code.¹

In summary, the department must withhold the pre-sentence investigation report you have marked pursuant to section 552.101 of the Government Code in conjunction with article 42.12 of the Code of Criminal Procedure. The department must release the fingerprints we have marked to this requestor pursuant to section 560.002 of the Government Code. 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 425123

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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

