



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2011

Mr. James Mu
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

Mr. John C. West
General Counsel
TDCJ-Office of the Inspector General
2616 West Howard Lane, Suite 250
Austin, Texas 78728

OR2011-11299

Dear Mr. Mu and Mr. West:

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# 426141.

The Texas Department of Criminal Justice (the "department") received a request for all information pertaining to a named inmate. The department's Office of General Counsel (the "OGC") and Office of the Inspector General (the "OIG") have submitted separate correspondence to this office, as well as separate responsive records each seeks to withhold from disclosure. The OGC states it will release some of the responsive information to the requestor. The OGC claims its submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. The OIG claims its submitted information is excepted under sections 552.101, 552.108, 552.130, and 552.134 of

the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the information submitted by the OGC contains the named inmate's fingerprint. 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 other statutes make confidential, such as section 560.003 of the Government Code, which provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). 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). Accordingly, we find a person, or the person's authorized representative, has a right of access under section 560.002(1)(A) to that person's biometric information. In this instance, the requestor has submitted a release of information signed by the named inmate whose fingerprint is at issue that authorizes the release of all information regarding the named inmate to the requestor. Thus, the requestor has a right of access to the named former inmate's fingerprint, which we have marked, under section 560.002(1)(A). Therefore, the department must release the marked fingerprint 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 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

We now turn to the OGC's and the OIG's arguments under section 552.134 of the Government Code for the remaining submitted information. Section 552.134(a) relates to inmates of the department and (a) states:

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). Section 552.134 is explicitly made subject to section 552.029 of the Government Code, which provides in part:

¹As the OIG has submitted no arguments under sections 552.102, 552.136, and 552.137 of the Government Code, which the OIG also cites, this decision does not address those exceptions. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submit comments stating why claimed exceptions are applicable to information at issue).

Notwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(8). Upon review, we find the remaining submitted information consists of records pertaining to an individual confined as an inmate in a facility operated by the department and is, therefore, generally subject to section 552.134. Although section 552.023 of the Government Code gives a person a “special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests,” we note section 552.134 does not protect only the inmate’s privacy interest. *See id.* § 552.023. Therefore, section 552.023 does not provide the requestor a special right of access to the remaining submitted information. We note some of the remaining information submitted by the OGC relates to an incident involving a use of force and alleged crimes involving inmates. Thus, in accordance with section 552.029, the OGC must release basic information about the use of force and the alleged crimes involving inmates. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Thus, with the exception of basic information, the OGC must withhold the remaining information it submitted pursuant to section 552.134 of the Government Code. The OIG must withhold the information it submitted under section 552.134 of the Government Code.²

In summary, the OGC must release the marked fingerprint pursuant to section 560.002 of the Government Code. With the exception of basic information, the OGC must withhold the remaining information it submitted under section 552.134 of the Government Code. The OIG must withhold the information it submitted under section 552.134 of the Government Code.

²As we are able to make these determinations, we do not address the other claimed exceptions, except to note basic information under section 552.029(8) corresponds to the basic front-page information that must be released under section 552.108(c) of the Government Code. *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976).

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,

A handwritten signature in cursive script that reads "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/tf

Ref: ID# 426141

Enc. Submitted documents

c: Requestor
(w/o enclosures)