



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2012

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

OR2012-12532

Dear Mr. Mu:

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# 461519.

The Texas Department of Criminal Justice (the "department") received a request for all prison records pertaining to a named individual. You state some information has been or will be made available to the requestor. 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.

Initially, we note the submitted information contains the requestor's client's fingerprint information. 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. Although you assert this information is excepted from disclosure under section 552.134 of the Government Code, we note statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Attorney General Opinion DM-146 at 3 (1992); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions to Act cannot impinge on statutory right of access to information), 451 (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 excepts 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 client'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 id.*; *see also* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision

prevails as exception to general provision); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). 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 encompasses information relating to inmates and former inmates of the department and provides:

(a) Except as provided by Subsection (b) or by Section 552.029, 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 consists of records pertaining to an individual confined as an inmate in a facility operated by the department and is, therefore, subject to section 552.134. Although section 552.023 of the Government Code gives a person or a person's representative 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 submitted information. We also find the exceptions in section 552.029 are not applicable in this instance. Accordingly, the department must withhold the remaining information under section 552.134(a) of the Government Code.¹

In summary, the department must release the submitted fingerprint information, which we have marked, under section 560.002 of the Government Code.² The department must withhold the remaining information under section 552.134(a) 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.

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

²We note this requestor has a special right of access under section 560.002 of the Government Code to the fingerprints being released. *See* Gov't Code § 560.002. Further, we note Open Records Decision No. 684 (2009) also authorizes all governmental bodies to withhold a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code without the necessity of requesting an attorney general decision. Accordingly, if the department receives another request for information from an individual other than the individual whose fingerprints are at issue or her authorized representative, the department is authorized to withhold her fingerprints under section 552.101 in conjunction with section 560.003.

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 black ink, appearing to read 'Nneka Kanu', written over a horizontal line.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 461519

Enc. Submitted documents

c: Requestor
(w/o enclosures)