



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2013

Ms. Rachel L. Lindsay  
Counsel for the City of McKinney  
Brown & Hofmesiter, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2013-16137

Dear Ms. Lindsay:

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# 499480 (McKinney ORR# 10-7750).

The City of McKinney (the "city"), which you represent, received a request for all sex offender registration records or documents held by the McKinney Police Department for a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have marked one of the submitted pages as not responsive. Upon review, we find the information is responsive to the request for sex offender registration records held by the city's police department. Accordingly, we will consider your arguments against its disclosure.

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 other statutes make confidential,

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<sup>1</sup>Although you also cite to chapter 159 of the Occupations Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this chapter applies to the submitted information. See Gov't Code §§ 552.301, .302.

including article 62.005(b) of the Code of Criminal Procedure.<sup>2</sup> Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information for the Texas Department of Public Safety (the “department”) sex offender registration database: the person’s full name; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver’s license number; shoe size; home address; each alias; home, work, or cellular telephone number; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; the identification of any online identifier established or used by the person; and any other information required by the department. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person’s social security number; driver’s license number; home, work, or cellular telephone number; the identification of any online identifier established or used by the person; all information required by the department outside of the enumerated categories of information including any information regarding an employer’s name, address, or telephone number; and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Thus, the city must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b).<sup>3</sup>

We understand you to claim the fingerprints contained in the submitted information are confidential under chapter 560 of the Government Code, which is also encompassed by section 552.101 of the Government Code. Section 560.003 provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). As previously noted, some of the requested information, including a fingerprint, is specifically made public by article 62.005(b) of the Code of Criminal Procedure. Thus, we must address the conflict between the access provided by article 62.005(b) and the confidentiality provided under section 560.003. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp.*

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

*v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *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); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). In this instance, article 62.005(b) specifically provides access only to certain categories of information found within sex offender registration records, while section 560.003 generally excepts all biometric identifier information maintained in any context. Thus, we conclude the access to certain types of sex offender registration information provided under article 62.005(b) of the Code of Criminal Procedure is more specific than the general confidentiality provided under section 560.003 of the Government Code. Consequently, the city may not withhold the submitted fingerprints under section 560.003 of the Government Code. Accordingly, the city must withhold or release the submitted information in accordance with article 62.005(b) of the Code of Criminal Procedure.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Paige Thompson", written in a cursive style.

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 499480

Enc. Submitted documents

c: Requestor  
(w/o enclosures)