



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2006

Ms. Carla M. Cordova
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2006-07219

Dear Ms. Cordova:

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# 253241.

The Texas Department of Criminal Justice (the "department") received a request for the inmate records and parole file of the requestor. You claim that 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. This section encompasses information protected by other statutes. Section 508.313(a)(2) of the Government Code makes confidential "[a]ll information obtained or maintained" by the department that relates to a "releasee," meaning a person released on parole or to mandatory supervision. *See* Gov't Code § 508.001(a)(9). You state that the submitted parole records, which you have marked, are "obtained and maintained by the Parole Division of the [department]" and are utilized by the Board of Pardons and Parole in its dealing with the requestor, a parolee. Based on your representations and our review, we conclude that this information is made confidential by section 508.313(a)(2) of the Government Code and that none of the release provisions of that statute apply in this instance. *See id.* §§ 508.313(c)-(f). Accordingly, the department must withhold the marked parole records pursuant to section 552.101 of the Government Code.

Section 552.134 relates to information about inmates of the department and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 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 conclude that the remaining submitted information consists of information about a former inmate who was confined in a facility operated by the department. Furthermore, we conclude that none of this information is subject to release under section 552.029 of the Government Code. Therefore, the remaining submitted information is subject to section 552.134 of the Government Code.

Generally, all information subject to section 552.134 of the Government Code must be withheld. However, in this instance, this information contains the requestor's fingerprints. Access to fingerprint information is governed by section 560.002 of the Government Code, which provides as follows:

A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Id. § 560.002. Under this provision, the requestor would have a right of access to his fingerprints. Accordingly, there is a conflict of laws between section 552.134 and section 560.002. 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); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). In this instance, section 560.002 is more specific than the general confidentiality provision in section 552.134. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision). Therefore, the submitted fingerprints must be released to the requestor. The remaining information at issue must be withheld under section 552.134 of the Government Code.

In summary, the department must withhold the marked parole records under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. The remaining submitted information must be withheld under section 552.134 of the Government Code, except that the department must release the fingerprints in this information to the requestor pursuant to section 560.002 of the Government Code. As our ruling is dispositive, we do not address your other arguments against disclosure.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dh

Ref: ID# 253241

Enc. Submitted documents

c: Mr. David Odom
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(w/o enclosures)