



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 28, 2009

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

OR2009-10385

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# 350493.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a named individual. You state some of the responsive information will be or has been released to the requestor. You claim the remaining requested 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 must address the procedural requirements of section 552.301 of the Government Code. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(e), within fifteen business days of receiving the request, the governmental body must submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You state the department received the request for information on May 11, 2009. Accordingly, the fifteen-business-day deadline for submitting the items enumerated under section 552.301(e) was June 2, 2009.

Although you timely submitted the majority of the information at issue, you did not submit a portion of the information until June 8, 2009. Consequently, we conclude the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from our office with respect to the information submitted on June 8, 2009.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.101 and 552.134 of the Government Code can provide compelling reasons to overcome this presumption; therefore, we will consider the department's claims under these exceptions.

Next, we note that the submitted documents contain fingerprints of the requestor's client. 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), 560.003 (biometric identifier in possession of governmental body is exempt from disclosure under Act). 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, the requestor has a right of access to his client's fingerprints under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Although the department seeks to withhold the fingerprints under sections 552.101 and 552.134 of the Government Code, the exceptions to disclosure found in the Act are generally not applicable to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the department must release the fingerprints that we have marked under section 560.002 of the Government Code.

We next address your argument under section 552.134 of the Government Code for the remaining information. 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). Section 552.029 of the Government Code provides in part that

[n]otwithstanding . . . 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:

- (1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

*Id.* § 552.029(1). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

You inform us that the records at issue pertain to an inmate confined in a facility operated by the department. Based on this representation, we agree that section 552.134(a) is generally applicable to the remaining submitted information. We note, however, that the submitted information includes department photographs of an inmate, which must be released under section 552.029(1). We also note the requestor, who represents the inmate who is the subject of the request, has submitted an "Authorization for Release of Information" signed by the inmate. Section 552.023 of the Government Code gives a person or that person's authorized 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." *Id.* § 552.023. However, section 552.134 not only protects the inmate's privacy interest, but also protects the interests of the governmental body. As such, the requestor does not have a special right of access to this information under section 552.023. *See id.* § 552.023(b) (governmental body may assert provisions of Act or other law that are not intended to protect person's privacy interests to withhold information to which requestor may otherwise have a special right of access). Accordingly, with the exception of the information that must be released under section 552.029, the department must withhold the remaining information under section 552.134 of the Government Code.<sup>1</sup>

In summary, the marked fingerprints must be released under section 560.002 of the Health and Safety Code. Except for the photographs that must be released under section 552.029 of the Government Code, the department must withhold the remaining submitted 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.

---

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

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](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 at (512) 475-2497.

Sincerely,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/eb

Ref: ID# 350493

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)