



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2011

Ms. Charlotte A. Towe
Assistant General Counsel
Texas Department of Criminal Justice
Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2011-04887

Dear Ms. Towe:

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# 415450.

The Texas Department of Criminal Justice (the "department") received a request for records pertaining to the requestor, a former inmate. You state that any non-confidential responsive information has been or will be released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code.¹ 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 exception encompasses information that other statutes make confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of criminal history record information ("CHRI") that states obtain from the federal government or other states.¹ Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of

¹We note that although the department initially raised other exceptions under the Act, you have since withdrawn your claims under those sections. Accordingly, we do not address any other exceptions.

the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Upon review, the information you have marked consists of CHRI. Accordingly, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses section 508.313 of the Government Code, which 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); *see id.* § 508.001(9) (“releasee” means person released on parole or to mandatory supervision). You state the information you have marked as parole records is maintained by the department’s parole division and is related to the requestor as a releasee. We note the requestor is not authorized to obtain the information in question under section 508.313(c).² *See id.* § 508.313(c)–(d). We also find the information at issue is not of the kind made public under section 552.029 of the Government Code. *See id.*

²Section 508.313(c) provides for the release of information encompassed by section 508.313(a) to the governor, a member of the board of pardons and paroles or a parole commissioner, the criminal justice policy council, or an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose. Section 508.313(d) provides that “eligible entity” means a government agency, an organization with which the department contracts or an organization to which the department provides a grant, or an organization to which inmates are referred for services by the department.

§§ 508.313(f), 552.029. We therefore conclude that the department must withhold the parole records you have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

Next, we note the remaining records contain the fingerprints of the requestor. The public availability of fingerprints is governed by chapter 560 of the Government Code. *See id.* §§ 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .003 (biometric identifier in possession of governmental body is exempt from disclosure under Act). Section 560.002 provides 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 own fingerprint information under section 560.002(1)(A). *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the department must release the submitted fingerprints, which we have marked, to this requestor under section 560.002 of the Government Code.

Next, you claim the remaining information is excepted under section 552.134 of the Government Code, which encompasses information relating to inmates and former inmates of the department and provides:

[e]xcept 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). Upon review, we agree the remaining information is related to a former inmate of the department. We note that none of the submitted information appears to be subject to section 552.029 of the Government Code. *See id.* § 552.029. Based on your representation and our review of the information at issue, we conclude the remaining information must be withheld under section 552.134 of the Government Code.

In summary, the department must withhold the CHRI you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law and the parole records you have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. The department must release the fingerprints we have marked to this requestor pursuant to section 560.002 of the Government Code. The department must withhold the remaining 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.

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/tf

Ref: ID# 415450

Enc. Submitted documents

c: Requestor
(w/o enclosures)