



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 30, 2015

Sheriff Danny C. Dominguez  
County Sheriff's Office  
County of Presidio  
P.O. Drawer V  
Marfa, Texas 79843

OR2015-13037

Dear Sheriff Dominguez:

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# 569623.

The Presidio County Sheriff's Office (the "sheriff's office") received a request for information pertaining to three named individuals, including information pertaining to sex offender registration for two of the named individuals. You state you will release some information to the requestor. You state the sheriff's office will withhold certain information pursuant to section 552.1175 of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

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<sup>1</sup>Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, social security number, date of birth, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See Gov't Code* § 552.1175(b), (f).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses article 62.005(b) of the Code of Criminal Procedure. 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 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 Texas Department of Public Safety 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). We note statutes governing the release of specific information generally prevail over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when it directly conflicts with common-law principle); *see also Cash Am. Intern. Inc. v. Bennett*, 35 S.W.3d 12, 16 (Tex. 2000) (statute depriving person of common-law right will not be extended beyond its plain meaning or applied to cases not clearly within its purview). Thus, the sheriff’s office must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which we have marked, in accordance with article 62.005(b) of the Code of Criminal Procedure.<sup>2</sup>

We understand you to claim the fingerprints contained in the information subject to article 62.005 of the Code of Criminal Procedure 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].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

geometry). However, section 560.002 of the Government Code provides, “[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). 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. 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 sheriff’s office may not withhold the fingerprints at issue under section 560.003 of the Government Code. Accordingly, the sheriff’s office must withhold or release the information at issue in accordance with article 62.005(b) of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. The present request requires the sheriff’s office to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicates the named individuals’ rights to privacy. Therefore, to the extent the sheriff’s office maintains unspecified law enforcement records depicting one of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff’s office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff's office must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which we have marked, in accordance with article 62.005(b) of the Code of Criminal Procedure. To the extent the sheriff's office maintains unspecified law enforcement records depicting one of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 569623

Enc. Submitted documents

c: Requestor  
(w/o enclosures)