



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 13, 2016

Mr. Bryan D. Snoddy  
General Counsel  
Texas Board of Chiropractic Examiners  
333 Guadalupe, Suite 3-825  
Austin, Texas 78701-3942

OR2016-01008

Dear Mr. Snoddy:

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# 594074.

The Texas Board of Chiropractic Examiners (the "board") received a request for information pertaining to a specified complaint against the requestor. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 201.206 of the Occupations Code, which provides, in part, the following:

- (a) The board's investigation files are confidential, privileged, and not subject to discovery, subpoena, or any other means of legal compulsion for release other than to the board or an employee or agent of the board.

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<sup>1</sup>Although you do not cite section 552.101 of the Government Code, we understand you to raise this exception based on your argument.

...

(d) Notwithstanding Subsection (a), the board may:

- (1) disclose a complaint to the affected license holder; and
- (2) provide to a complainant the license holder's response to the complaint, if providing the response is considered by the board to be necessary to investigate the complaint.

Occ. Code § 201.206(a), (d). Section 201.206 applies to all investigations pending or filed on or after September 1, 2003. *See* Act of May 9, 2003, 78th Leg., R.S., ch. 329, § 7(b), 2003 Tex. Gen. Laws 1405, 1407. The submitted information reveals the investigation file at issue was opened after September 1, 2003. We understand this investigation file concerns a complaint about a chiropractor licensed by the board and is maintained by the board pursuant to section 201.204. *See* Occ. Code § 201.204 (setting forth the board's record keeping requirements with respect to complaints filed with the board). Thus, we find the submitted information is part of the board's investigation file and section 201.206 governs release of this information. We have no indication the requestor is entitled to any of the information at issue under section 201.206(d). Therefore, the submitted information is generally confidential under section 201.206 of the Occupations Code.

However, we note the information at issue contains the requestor's fingerprints, the public availability of which is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.003 of the Government Code 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). 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). Accordingly, we find a person or the person's authorized representative has a right of access under section 560.002(1)(A) to that person's biometric information. Thus, the requestor has a right of access to his fingerprints under section 560.002 of the Government Code. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning themselves or individuals they represent).

Therefore, there is a conflict between the confidentiality mandated under section 201.206 of the Occupations Code and the right of access provided to this requestor under section 560.002 of the Government Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails over the general provision unless the general provision was enacted later and there is clear evidence that the legislature

intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, we find section 201.206 of the Occupations Code generally applies to information in the board's investigation files. Section 560.002 of the Government Code, however, applies specifically to biometric identifier information. Accordingly, we find the right of access provided to this requestor under section 560.002 prevails over the general confidentiality of section 201.206 of the Occupations Code. Thus, the requestor's fingerprints must be released to him pursuant to section 560.002 of the Government Code.

In summary, the requestor's fingerprints must be released to him pursuant to section 560.002 of the Government Code. The board must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 201.206 of the Occupations 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.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,



Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 594074

Enc. Submitted documents

c: Requestor  
(w/o enclosures)