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ATTORNEY GENERAL OF TEXAS

June 6, 2017

Mr. Sharbel Sfeir
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2017-12357

Dear Mr. Sfeir:

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# 660726 (TDCJ# GG0015).

The Texas Department of Criminal Justice (the "department") received a request for information used during the civil commitment review pertaining to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains fingerprints whose public availability 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). Section 560.002 of the Government Code provides, however, "[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, as the individual whose fingerprints are at issue, the requestor has a right of access to his fingerprints under section 560.002(1)(A). The general exceptions found in the Act, such as sections 552.108 and 552.134 of the Government Code, cannot impinge on a statutory right of access to information. *See Open Records Decision Nos. 613 at 4 (1993), 451 at 4 (1986).*

Therefore, the department must release the fingerprints, which we have marked, to this requestor pursuant to section 560.002 of the Government Code.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). We note some of the submitted information consists of completed reports and is part of a completed investigation subject to subsection 552.022(a)(1). The department must release this information pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). We also note the submitted information contains court-filed documents that are subject to subsection 552.022(a)(17). This information is expressly public under subsection 552.022(a)(17), and the department must release it unless it is confidential under the Act or other law. Although you raise section 552.108 of the Government Code for the information subject to section 552.022(a)(17), this is a discretionary exception to disclosure that protects the governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the department may not withhold the information subject to subsection 552.022(a)(17) under section 552.108 of the Government Code. However, because information subject to subsection 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your assertion of that exception for the information subject to section 552.022(a)(1). Additionally, because sections 552.101 and 552.134 of the Government Code can make information confidential under the Act, we will consider the applicability of these exceptions to the information at issue. Furthermore, we will consider your arguments for the submitted information not subject to section 552.022(a)(1).

Section 552.134(a) of the Government Code relates to inmates of the department and provides in, relevant part, the following:

(a) Except 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.

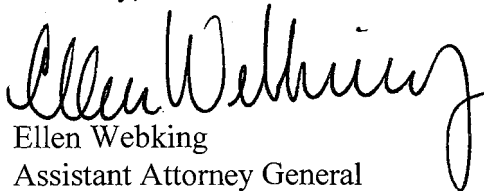
Gov't Code § 552.134(a). Upon review of the remaining information, we agree it pertains to an individual who was formerly confined as an inmate in a facility operated by the department. Although section 552.023 of the Government Code gives a person or a person's authorized representative a "special right 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," we note section 552.134 does not protect only the inmate's privacy interest. *See id.* § 552.023. Therefore, section 552.023 does not provide the requestor a special right of access to the submitted information in this instance. Accordingly, the department must withhold the remaining information under section 552.134 of the Government Code.¹

In summary, the department must release the fingerprints, which 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.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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

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

Ref: ID# 660726

Enc. Submitted documents

c: Requestor
(w/o enclosures)