



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 12, 2017

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

OR2017-23347

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# 679637 (TDCJ#ZT0049).

The Texas Department of Criminal Justice (the "department") received a request for the entire parole file pertaining to the requestor. You state you released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code.<sup>1</sup> 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,

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<sup>1</sup>We note the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exceptions it claims can provide a compelling reason to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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 section 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).

You also seek to withhold the requestor’s fingerprints under section 508.313 of the Government Code. Section 508.313 is encompassed by section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 508.313 provides in part:

(a) All information obtained and maintained [by the department], 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 a person released on parole or to mandatory supervision). The department states the information at issue consists of the requestor’s parole file, which is subject to section 508.313 of the Government Code. We understand the requestor is not authorized to obtain this information under section 508.313(c). *See id.* § 508.313(c). Further, there is no indication this information is made public under chapter 62 of the Code of Criminal Procedure or section 552.029 of the Government Code. *See id.* § 508.313(e), (f). Accordingly, we agree section 508.313 is also applicable to the fingerprints at issue. Thus, we must address the conflict between the confidentiality provided under section 508.313 of the Government Code and the right of access provided under section 560.002 of the Government Code. 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. In this instance, the access provided by section 560.002 of the Government Code is more specific than the general confidentiality provisions of section 508.313 of the Government Code. Accordingly, section 560.002 more specifically governs the public availability of the submitted fingerprints and prevails over the more general confidentiality provisions of section 508.313. *See Cuellar*, 521 S.W.2d at 277 ; *see also* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); ORDs 598, 583, 451. Therefore, the department must release the submitted fingerprints to this requestor pursuant to section 560.002 of the Government Code.

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 remaining information in this instance. Accordingly, the department must withhold the remaining information under section 552.134 of the Government Code.<sup>2</sup>

In summary, the department must release the submitted fingerprints 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.

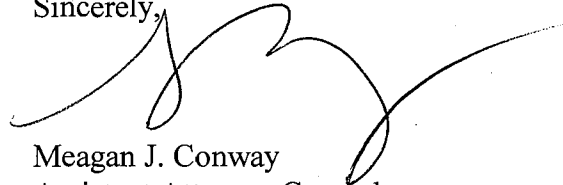
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument 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.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,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MC/sb

Ref: ID# 679637

Enc. Submitted documents

c: Requestor  
(w/o enclosures)