



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 15, 2020

Mr. William Overton
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2020-01434

Dear Mr. Overton:

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# 806259 (OGC#PP0164).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101, 552.134, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information 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). 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 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). Therefore, the department must release the fingerprints, which we marked, 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 the following:

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). Section 552.134 is explicitly made subject to section 552.029, which provides, in relevant part, the following:

Notwithstanding Section . . . 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(8). Upon review, we agree the submitted information constitutes information about an inmate for purposes of section 552.134. However, some of the submitted information pertains to an alleged crime involving the inmate. Thus, pursuant to section 552.029 the department must release basic information from that information. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident.¹ With the exception of basic information related to a crime involving the inmate, which must be released, the department must withhold the remaining information under section 552.134 of the Government Code.²

In summary, the department must release the fingerprints, which we marked, pursuant to section 560.002 of the Government Code. With the exception of basic information related to a crime involving the inmate, which must be released, the department must withhold the remaining information under section 552.134 of the Government Code.

¹We note basic information does not include the identities of witnesses for purposes of section 552.134 of the Government Code.

² As our ruling under section 552.134 of the Government Code is dispositive, we need not address the remaining arguments against disclosure of the remaining information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "D. Michelle Case". The signature is written in a cursive style with a long horizontal flourish extending to the right.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/jxd

Ref: ID# 806259

Enc. Submitted documents

c: Requestor
(w/o enclosures)