



January 14, 2000

Ms. Regina Grimes  
Assistant General Counsel  
TDCJ-Office of the General Counsel  
8610 Shoal Creek Boulevard  
Austin, Texas 78758

OR2000-0161

Dear Ms. Grimes:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 131204 and ID# 131443.

The Texas Department of Criminal Justice (the "department") received a written request for nine categories of information pertaining to the department's decision that "Specialized Programs/Contract Monitors" are ineligible to receive enhanced retirement benefits.<sup>1</sup> You state that some responsive information will be released to the requestors. You contend, however, that some of the requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.111 of the Government Code.<sup>2</sup>

Section 552.101 excepts from required public disclosure, *inter alia*, information that is made confidential by statute. Section 508.313 of the Government Code makes confidential information that relates to "(1) an inmate of the institutional division 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. The travel records submitted to this office contain information about such individuals. We have marked the

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<sup>1</sup>You state that the department received the records request on October 26, 1999. You sought a decision from this office on November 9, 1999, the tenth business day following the department's receipt of the records request. See Gov't Code § 552.301(b). We conclude, therefore, that the submission of your decision request was timely.

<sup>2</sup>Although you also contend that some of the requested information is protected from public disclosure pursuant to sections 552.103 and 552.107(1) of the Government Code, you did not raise these exceptions within the ten business days following the department's receipt of the records request. See Gov't Code § 552.301(b). Consequently, we view these two exceptions as being waived. See Gov't Code § 552.302. None of the requested information may be withheld under either section 552.103 or 552.107(1).

portions of those records that the department must withhold pursuant to section 508.313 of the Government Code. The remaining portions of those records, however, must be released.

You next contend that some of the requested information is excepted from required public disclosure pursuant to section 552.111 of the Government Code. Section 552.111 excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . . [Emphasis in original.]

The records at issue concern whether certain department employees are entitled to enhanced retirement benefits. These records do not directly relate to the policy mission of the department, but rather pertain solely to an administrative or personnel matter related to the type of retirement benefits certain department employees are entitled to receive. See *Garland v. Dallas Morning News*, No. 98-0617, 2000 WL 19032, (Tex. Sup. Ct. Jan. 13, 2000) (personnel communications not relating to agency's policymaking not excepted from public disclosure pursuant to section 552.111); *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 457 (Tex. App.--Houston [14th Dist.] 1996), *writ denied per curiam*, 41 Tex. Sup. Ct. J. 575 (1998) (documents relating to specific employee do not relate to making of new policy but merely implement existing policy). We therefore conclude that none of the information at issue may be withheld under section 552.111. Consequently, except for information made confidential under section 508.313 of the Government Code, the requested records must be released in their entirety, with the following exception.

Some of the documents you submitted to this office contain the social security numbers of department employees. Section 552.117(3) of the Government Code requires that the department withhold these social security numbers. Unlike other public employees, department employees need not affirmatively elect to have this information kept confidential. See Gov't Code § 552.117(3).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson  
Assistant Attorney General  
Open Records Division

CGD/RWP/ch

Ref.: ID# 131204 and ID# 131443

cc: Mr. Michael D. de Luna  
Contract Monitor  
TDCJ-Specialized Programs  
Austin Office  
8610 Shoal Creek Boulevard  
Austin, Texas 78758  
(w/o enclosures)

Mr. O. J. Igwe  
Contract Monitor  
TDCJ-Specialized Programs  
Austin Office  
8610 Shoal Creek Boulevard  
Austin, Texas 78758  
(w/o enclosures)

Ms. Judith Choate  
Contract Monitor  
TDCJ-Specialized Programs  
Mineral Wells Office  
759 Heintelman Road  
Minerals Wells, Texas 76067  
(w/o enclosures)

Mr. Gil Hays  
Contract Monitor  
TDCJ-Specialized Programs  
Lockhart Office  
8345 Telephone Road  
Houston, Texas 77061  
(w/o enclosures)

Mr. Rally Quintanilla  
Contract Monitor  
TDCJ-Specialized Programs  
Midland Office  
516 Air Park Road  
Midland, Texas 79710  
(w/o enclosures)

Ms. Roberta M. King  
Contract Monitor  
TDCJ-Specialized Programs  
Arlington Office  
1201 N. Watson Road, #250  
Arlington, Texas 76006  
(w/o enclosures)

Ms. Lettie Hierbe  
Contract Monitor  
TDCJ-Specialized Programs  
Arlington Office  
1201 N. Watson Road, #250  
Arlington, Texas 76006  
(w/o enclosures)