



August 22, 2001

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-3721

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151085.

The Texas Department of Criminal Justice (the "department") received a request for all written correspondence between the department and the Board of Pardons and Paroles, and "any notes, memos, computer entries, logs, and records," relating to a named individual. You inform us that the information in Exhibits 1 and 3 is "available to the public."¹ You claim that the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note at the outset that the submitted information includes information that is subject to section 552.022. Section 552.022 provides in relevant part that:

the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under 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;

¹We therefore assume that the department has released this information to the requestor. If not, then you must do so immediately. See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a) (emphasis added). The information that you submitted to us for review appears to contain one or more completed reports or investigations, as well as fee receipts and other records of payments, which are included in the categories of information made expressly public by section 552.022. Gov't Code section 552.022(a)(1), (a)(3). Thus, this information must be disclosed unless expressly made confidential by law.

You claim that the information at issue is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.² Section 508.313 accords confidentiality to the records of the Board of Pardons and Paroles. *See* Open Records Decision Nos. 33 (1974), 190 at 2 (1978); *see also* Attorney General Opinion H-427 (1974). Section 508.313 provides as follows:

(a) All information obtained and maintained, 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 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.

(b) Statistical and general information relating to the parole and mandatory supervision system, including the names of releasees and data recorded relating to parole and mandatory supervision services, is not confidential or privileged and must be made available for public inspection at any reasonable time.

(c) The department may provide information that is confidential and privileged under Subsection (a) to:

(1) the governor;

² Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

- (2) a member of the board;
 - (3) the Criminal Justice Policy Council in performing duties of the council under Section 413.021; or
 - (4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.
- (d) In this section, "eligible entity" means:
- (1) a government agency, including the office of a prosecuting attorney;
 - (2) an organization with which the department contracts or an organization to which the department provides a grant; or
 - (3) an organization to which inmates are referred for services by the department.
- (e) This section does not apply to information relating to a sex offender that is authorized for release under Chapter 62, Code of Criminal Procedure.
- (f) This section does not apply to information that is subject to required public disclosure under Section 552.029.

Gov't Code § 508.313.

You inform us that the submitted documents are from the Parole Division's file records obtained and maintained for the Board of Pardons and Paroles. You also state that the documents pertain to "a releasee." After reviewing your arguments and the submitted documents, we conclude that the documents at issue are records obtained and maintained by the Board of Pardons and Paroles that are governed by section 508.313 of the Government Code.

We note, however, that these documents contain information that relates to a sex offender that was authorized for release under Chapter 62 of the Code of Criminal Procedure.³ Section 508.313 does not apply to information relating to a sex offender that is authorized

³ A person who has a "reportable conviction or adjudication" under Chapter 62 shall register with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days. *See* Crim. Proc. Code art. 62.02(a). The inmate here was convicted of "indecent with a child," a "reportable conviction" pursuant to article 62.01(5)(D) of the Code of Criminal Procedure. Therefore, the inmate was required to register particular information with the Texas Department of Public Safety. *See id.*

for release under Chapter 62 of the Code of Criminal Procedure. *See* Gov't Code § 508.313(e). Article 62.02(b) of the Code of Criminal Procedure requires a sex offender registrant to provide the Texas Department of Public Safety ("DPS") with the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a recent color photograph, or if possible, an electronic digital image of the person; a complete set of the person's fingerprints; the type of offense the person was convicted of; the age of the victim; the date of the conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; and any other information required by DPS. *See* Crim. Proc. Code art. 62.02(b). This information is generally public information with the exception of the following information: the person's social security number, driver's license number, telephone number; all information required by DPS outside of the enumerated categories of information; and any information that would identify the victim of the offense for which the person is subject to registration. *See* Crim. Proc. Code art. 62.08(b). Therefore, with the exception of the information governed by Chapter 62 of the Code of Criminal Procedure, the department must withhold the submitted documents under section 552.101 in conjunction with section 508.313 of the Government Code.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 151085

Enc. Submitted documents

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(w/o enclosures)