



September 28, 2001

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-4364

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152488.

The Texas Department of Criminal Justice (the "department") received a request for information relating to the dismissal of an employee. You inform this office that you have released information responsive to item 1 of this request. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. You contend that all of the information at issue is confidential under section 508.313 of the Government Code. Section 508.313 provides in part:

(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 [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.

Gov't Code § 508.313(a); *see also id.* § 508.001(9) (providing that "releasee" means "a person released on parole or to mandatory supervision"). You represent to this office that the information submitted as Exhibit A concerns a releasee. You also assert that the documents submitted as Exhibit B "are about offenders obtained and maintained by the Parole Division of [the department]." Based on your representations, we agree that Exhibit A is confidential under section 508.313 and thus must be withheld under section 552.101 of the Government Code. Upon careful review of the information in Exhibit B, we also conclude that some of that information is confidential under section 508.313 and must be withheld under section 552.101. We have marked that information.

With regard to the remaining information in Exhibit B, we address your claim under section 552.108 of the Government Code. Section 552.108, the "law enforcement exception," provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication [.]

Gov't Code § 552.108(a)(2), (b)(2). A governmental body that raises section 552.108 must reasonably explain, if the responsive information does not supply the explanation on its face, how and why section 552.108 is applicable to that information. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) and (b)(2) protect information relating to a concluded criminal investigation that did not result in a conviction or a deferred adjudication.

You represent to this office that the information in Exhibit B "relates to an allegation of illegal substance abuse that was investigated and closed after finding insufficient evidence to proceed with the investigation." You do not inform us, however, and it does not otherwise appear to this office that the information in Exhibit B relates to a criminal investigation. We therefore conclude that the department has not demonstrated that the remaining information in Exhibit B is excepted from disclosure under section 552.108. *See* Gov't Code § 552.108(a)(2), (b)(2); *see also Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.--El Paso 1992, writ denied) (stating that statutory predecessor to section 552.108 was not applicable where no criminal investigation or prosecution of police officer resulted from internal affairs investigation); Open Records Decision No. 350 (1982) (stating that statutory predecessor was not applicable to internal affairs investigation file when no criminal charge against police officer results from investigation).

In summary, the information in Exhibit A and some of the information in Exhibit B is confidential under section 508.313 of the Government Code. This information must be withheld under section 552.101 of the Government Code. The remaining information in Exhibit B must be released.

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).

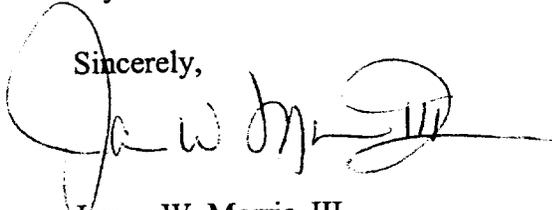
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dept. 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, sweeping initial "J" and a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 152488

Enc: Marked documents

c: Mr. Kirk W. Cox
6115 Chaffin
Houston, Texas 77087
(w/o enclosures)