



November 2, 2001

Mr. Kelley McCormick
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2001-5047

Dear Mr. McCormick:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154266.

The Office of the Governor (the "Governor") received two written requests for the letter sent to the Governor from State District Judge Cynthia Stevens Kent regarding the execution of Napoleon Beazley. You contend that the requested information is made confidential under section 508.313 of the Government Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 508.313(a) of the Government Code provides

(a) All information obtained and maintained [by the Board of Pardons and Paroles], including victim protest letters or other correspondence, victim impact statements, lists 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;¹ or

¹"Releasee" means a person released on parole or to mandatory supervision. Gov't Code § 508.001.

(3) a person directly identified in any proposed plan of release for an inmate.

Gov't Code § 508.313(a) (footnote added). By its very terms, section 508.313 applies only to certain inmate information maintained by the Board of Pardons and Paroles. Although section 508.313(c)(1) specifically provides for the release of the otherwise confidential inmate information to the Governor, the Governor did not receive the requested correspondence from the Board of Pardons and Paroles; consequently the release of the requested correspondence is not governed by section 508.313. Because you have raised no other exception to required public disclosure, we conclude that the requested correspondence must be released to the requestors in its entirety.²

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).

²We additionally note that, subsequent to your request for this decision, the requested correspondence was attached to Beazley's "Supplemental Brief to Motion for Stay of Execution and Application/Petition for Post-Conviction Writ of Habeas Corpus," thereby making the correspondence available to any member of the public as a public court record.

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 M. Nettles
Assistant Attorney General
Open Records Division

CMN/RWP/sdk

Ref: ID# 154266

Enc. Submitted documents

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