OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 16, 2002

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

OR2002-1912

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# 161332.

The Texas Department of Criminal Justice (the "department") received a request for information regarding the process and procedures used during a parole review, and all information relating to a named inmate. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. Your request for a decision does not address the portion of the request for the above-mentioned process and procedures. We assume that the department has released this information to the extent that it exists. If you have not, you must do so at this time. *See* Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000).[1] We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 508.313 of the Government Code. Section 508.313 provides in part:

[1] We note that a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds or to which it has access. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dism'd); Open Records Decision No. 561 at 8 (1990). However, the Act does not require a governmental body to answer factual questions, perform legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989).

> (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 of Criminal Justice] 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). You inform this office that the submitted documents are held by the Parole Division of the department as part of the parole file of an inmate of the Institutional Division. You state that this information is utilized by the Board of Pardons and Parole to determine whether the inmate will be released on parole. You assert that the submitted documents are thus information obtained or maintained by the department that relates to an inmate subject to release on parole, release to mandatory supervision, or executive clemency, and are therefore confidential under section 508.313 of the Government Code. Based on your representations, we conclude that the requested information is confidential under section 508.313. Therefore, this information is excepted from disclosure under section 552.101 of the Government Code and must be withheld. As we are able to make this determination, we need not address your arguments under section 552.134.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 161332

Enc. Submitted documents

c: Ms. Minnie Hayes
3216 Shady Trail
Tyler, Texas 75702
(w/o enclosures)