OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

May 21, 2002

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

OR2002-2706

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# 163230.

The Texas Department of Criminal Justice (the "department") received a request for a list of information from the requestor's personnel file. You indicate that the department has released most of the requested information. You claim that some of the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

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. The department raises section 552.101 in conjunction with section 508.313 of the Government Code. Chapter 508 of the Government Code is applicable to the department. 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 [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.

(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) a member of the [Board of Pardons and Paroles];

(3) the Criminal Justice Policy Council in performing duties of the council under Section 413.017 [of the Government Code]; 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 [of the Government Code].

The department asserts that the submitted documents contain information relating to parolees that is confidential under section 508.313. The department states that the confidential information in the documents at Tab 1 includes a parolee's last report date; Department of Public Safety rap sheet date; and criminal history record information. The department states

that the confidential information in the documents at Tabs 2 through 5 includes a parolee's last report date; rap sheet date; criminal history record information; social security, driver's license, home telephone, and cell phone numbers; the name of the person with whom a parolee resides; the name, address, and telephone number of a parolee's nearest relative; and a parolee's place of employment and employer's name, address, and telephone number. Based on your representations, we agree that these types of information are confidential under section 508.313 of the Government Code. You do not inform us, nor does it appear to this office, that section 508.313 permits the department to release these types of information to this requestor. Therefore, the submitted information that section 508.313 makes confidential must be withheld from disclosure under section 552.101 of the Government Code. The remaining information 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).

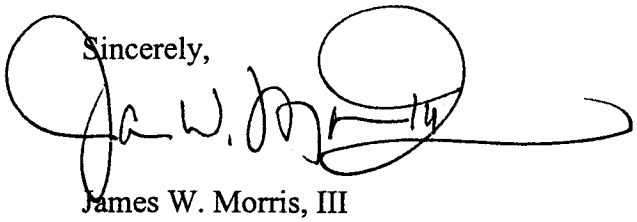
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



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

JWM/sdk

Ref: ID# 163230

Enc: Submitted documents

c: Ms. Susan M. Howard
4075 Enchanted Sun
San Antonio, Texas 78244
(w/o enclosures)