



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 10, 2002

Mr. James M. Frazier, III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2002-7025

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#173386.

The Texas Department of Criminal Justice (the "department") received a request for all information which indicates that a named individual violated a rule or regulation or was investigated for violation of a rule or regulation while in the department's custody. The requestor also seeks information regarding communications from any law enforcement official indicating that such official attempted to prevent or delay the revocation of the named individual's parole. You claim that the requested information is contained in parole records and disciplinary documentation and is excepted from disclosure under sections 552.101, 552.117 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We also note that you sought to withdraw your request for a decision from this office because, subsequent to your original request, you received a subpoena duces tecum from the same requestor for what you believed to be the same information. A subpoena duces tecum is not a request for public information under chapter 552 of the Government Code. Gov't Code § 552.0055. However, the requestor's original request is a request for public information under chapter 552 of the Government Code. As such, your request for a decision from this office in response to the original open records request is pending and we will address your arguments for withholding based on that request.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, including section 508.313 of the Government Code. Section 508.313 states:

(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) 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.

A “releasee” is a person released on parole or to mandatory supervision. Gov’t Code § 508.001(9). You indicate that portions of the submitted information are about an inmate released on mandatory supervision or parole under the supervision of the Parole Division of the department. Upon review of the submitted information, we conclude that the portions of the submitted information marked by the department as such are made confidential by section 508.313(a)(2). The submitted information does not appear to be “[s]tatistical and general information relating to the parole and mandatory supervision system” for purposes of section 508.313(b). Further, the requestor here does not appear to be an entity authorized to obtain the submitted information under section 508.313(c). Nor does the submitted information appear to be made public under section 552.029 of the Government Code,<sup>1</sup> see Gov’t Code § 508.313(f), or under chapter 62 of the Code of Criminal Procedure,<sup>2</sup> see Gov’t Code § 508.313(e). We therefore conclude that the information marked by the department as such is excepted from disclosure in its entirety under section 552.101 in conjunction with section 508.313 of the Government Code and must not be released to the requestor.

We will address your argument under section 552.134 with respect to the remaining information. Section 552.134(a) of the Government Code provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.029 of the Government Code provides:

Notwithstanding Section 508.313 or [552.134], the following information about an inmate who is confined in a facility operated by or under a contract

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<sup>1</sup>Section 552.029 provides that, notwithstanding sections 508.313 or 552.134, certain information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under the Public Information Act.

<sup>2</sup>Chapter 62 of the Code of Criminal Procedure relates to the registration of sex offenders and provides at article 62.08 that registration information is to be maintained by the Department of Public Safety in a central database which, with certain exceptions, is public information.

with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible release dates;
- (6) the inmate's parole date or earliest possible parole date;
- (7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or
- (8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Section 552.134 is explicitly made subject to section 552.029. Section 552.029 does not make public any of the information at issue here. We therefore conclude that the information marked as such by the department must be withheld in its entirety pursuant to section 552.134 of the Government Code. As sections 552.101 and 552.134 are dispositive, we need not address your remaining argument.

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).

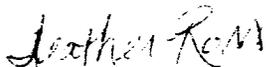
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Heather Pendleton Ross  
Assistant Attorney General  
Open Records Division

HPR/sdk

Ref: ID# 173386

Enc: Submitted documents

c: Mr. Stephen Baer  
5015 Tracy, Suite 100  
Dallas, Texas 75205-3400  
(w/o enclosures)