



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 23, 2002

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

OR2002-7356

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# 174066.

The Texas Department of Criminal Justice (the "department") received a request from a legislator for a complete copy of a certain investigative report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also claim that the requestor does not maintain a special right of access to the requested information under section 552.008 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that the information is made confidential by article 39.14 of the Code of Criminal Procedure. In this case, we need not determine the applicability of that statute or section 552.108 as we conclude that section 552.008 grants the requestor a right of access to the information.

In this case, the requestor is a member of the Texas Legislature who states that she requests the information at issue "[a]s a member of the Texas Legislature, in the context of performing my job as a Legislator." Section 552.008 provides a member of the legislature a right to information if the member states that the information is requested under the Public Information Act (the "Act") for legislative purposes. You argue, however, that the requestor's status as a legislator does not grant her a special right of access to the requested information under section 552.008 of the Government Code. In making this argument, you specifically rely on Attorney General Opinion H-427 (1974) in which we ruled that the predecessor provision of section 552.008 does not require the Parole Board to reveal parole files of inmates to an individual legislator that has requested such information. Additionally, in Attorney General Opinion H-353 (1974), we concluded that legislative access to information is limited to information made confidential by the Act and does not grant

legislators access to information made confidential by other statutes. However, as you acknowledge, in 1995, the Seventy-fourth Legislature amended section 552.008. *See Acts of 1995, 74th Leg., ch. 1035, § 2, eff. Sept. 1, 1995.* Section 552.008 now provides in pertinent part as follows:

(a) This chapter does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future.

You state that “the wording in question, on its face, provides that a legislator is entitled to receive confidential information as limited by the terms of the [Act]” and that “had the legislature intended for an individual legislator to obtain information made confidential under other law, it would have expressly so stated.” We disagree. Based on the plain language of section 552.008, when a legislator requests information for a legislative purpose, a legislator’s entitlement to obtain confidential information is not limited to information made confidential by the Act. Therefore, even if we had determined that the information is made confidential by other law, since the legislator states that she seeks the submitted information for a legislative purpose and otherwise complies with section 552.008, you should provide the submitted information to the requestor pursuant to section 552.008 of the Government Code. Furthermore, we note that this section provides that disclosure of confidential information to a legislator does not affect the confidentiality of the information or the right to assert exceptions in the future regarding that information, and provides specific procedures relating to the confidential treatment of the information.

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).

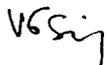
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 174066

Enc: Submitted documents

c: Honorable Terri Hodge
Texas House of Representatives
4032 Swiss Avenue
Dallas, Texas 75204
(w/o enclosures)