



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 31, 2003

Mr. Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
P.O. Box 12927
Austin, Texas 78711-2927

OR2003-0661

Dear Mr. Seidenberg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175846.

The Texas State Library and Archives Commission ("TSLAC") received a request for records from the tenure of former Governor George W. Bush pertaining to the execution of David Wayne Spence. You indicate that TSLAC will release some of the requested information. You further indicate that this office has previously ruled on some of the requested information in Open Records Letter Nos. 2000-2402 (2000) and 2002-2313 (2002). In Open Records Letter No. 2000-2402, this office found that the Office of the Governor was required to withhold some information regarding the execution of David Wayne Spence under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. Similarly, in Open Records Letter No. 2002-2313, this office found that TSLAC was required to withhold some of former Governor George W. Bush's records pertaining to David Wayne Spence under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. You indicate that since the issuance of Open Records Letter No. 2002-2313, you have discovered new facts that indicate that some of the information previously ruled to be confidential under section 508.313 of the Government Code is, in fact, not confidential and must be released.

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 is made confidential under other statutes. Chapter 508 of the Government Code is applicable to the Texas Department of Criminal Justice ("TDCJ"). Section 508.313 provides in part:

(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 TDCJ] 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.

...

(c) [TDCJ] may provide information that is confidential and privileged under Subsection (a) to:

(1) the governor;

....

Gov't Code § 508.313. Based on the information provided to this office at the time, we found in Open Records Letter No. 2002-2313 that the information at issue had been transferred to the Governor by TDCJ in connection with clemency matters. Therefore, we concluded that the information was confidential in the hands of TDCJ and remained confidential after it had been transferred to the Governor's Office under section 508.313. You state that TSLAC has discovered that some of the information we previously determined had been provided to the Governor's Office by TDCJ in connection with clemency matters was in fact provided to the Governor's Office by third parties. You further indicate that TSLAC has discovered other information responsive to the instant request that was provided to the Governor's Office by third parties and not TDCJ. Consequently, you contend that the submitted information should not be considered confidential under section 508.313 of the Government Code. Based on your assertion that the submitted information was provided to the Governor's Office by third parties and not TDCJ, we agree that none of the submitted information is confidential under section 508.313 of the Government Code.

However, we note that the submitted information contains a license plate number that may be excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, TSLAC must withhold the marked license plate number under section 552.130 if the number relates to a vehicle title or registration issued by an agency of the State of Texas. TSLAC must release the remainder of the submitted 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).

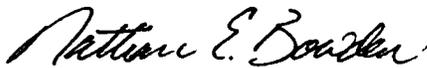
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. Dep't of Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 175846

Enc: Submitted documents

c: Mr. Pete Yost
The Associated Press
2021 K Street N.W.
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(w/o enclosures)