



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

July 28, 2004

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

OR2004-6321

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# 206062.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to two specified department Equal Employment Opportunity division investigations. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in part, that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code § 552.022(a)(1). The submitted information constitutes two completed investigations made of, for, or by the department that are subject to section 552.022(a)(1). Thus, the department must release the submitted information, unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law.<sup>1</sup> Although the department claims that the submitted information is excepted from disclosure pursuant to section 552.103 of the Government Code, we note that section 552.103 is a discretionary exception to disclosure under the Public Information Act (the "Act") that does not constitute "other law" for purposes of section 552.022.<sup>2</sup> Accordingly, we conclude that the department may not withhold any portion of the submitted information under section 552.103 of the Government Code. However, since the department also claims that portions of the submitted information are excepted from disclosure pursuant to sections 552.101 and 552.117 of the Government Code, we will address these particular claims.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.<sup>3</sup> 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 the department] subject to release on parole, release to mandatory supervision, or executive clemency;

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<sup>1</sup> We note that the department does not claim that any portion of the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code.

<sup>2</sup> Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (governmental body may waive statutory predecessor to section 552.111); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions, therefore, do not generally constitute "other law" for purposes of section 552.022 of the Government Code.

<sup>3</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

(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 [B]oard [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.

Gov't Code § 508.313(a)-(c); *see also id.* § 508.001(9) ("releasee" means person released on parole or to mandatory supervision). You assert that portions of the submitted information are confidential under section 508.313(a). You indicate that this information is held by the parole division of the department as part of the information about each person released from prison on mandatory supervision or parole who has been ordered to pay restitution. Based on your representations and our review of the submitted information, we conclude that the department must withhold portions of this information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

Finally, you claim that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.117 of the Government Code. We note that section 552.117(a)(3) requires that the department withhold the home address and telephone number, social security number, and family member information of current or former department employees, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. Based on your representations and our review of the

remaining submitted information, we have marked those portions of this information that the department must withhold pursuant to section 552.117(a)(3) of the Government Code.<sup>4</sup>

In summary, the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code and section 552.117(a)(3) of the Government Code. The department must release the remaining submitted information to the requestor.

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).

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<sup>4</sup> We note that the submitted information includes other information that would normally be excepted from disclosure pursuant to section 552.117(a)(3). However, because this particular information pertains solely to the requestor, the department may not withhold it from the requestor under section 552.117(a)(3) of the Government Code. *See* Gov't Code § 552.023 (providing that individual has limited special right of access to information when only basis for excepting information from disclosure involves protection of same individual's privacy interest); *see also* Open Records Decision No. 481 (1987). We also note, however, that if the department receives another request for this particular information from a different requestor, the department should again seek a decision from this office before releasing to the requestor the information that is requested in that instance.

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 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/jh

Ref: ID# 206062

Enc. Marked documents

c: Mr. Ferdinand M. Nwagbo  
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(w/o enclosures)