ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2006

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

OR2006-00926

Dear Mr. Mondville:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 240946.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a former department inmate. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we note that the submitted information includes an arrest warrant and its supporting affidavit. Article 15.26 of the Code of Criminal Procedure states that

> [t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours.

Crim. Proc. Code art. 15.26. Thus, these documents are made public under article 15.26. Exceptions to disclosure under the Act generally do not apply to information that is made

public by other statutes, such as article 15.26 of the Code of Criminal Procedure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, the arrest warrant and its supporting affidavit must be released to the requestor.

We now address your arguments against disclosure with respect to the remaining submitted information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. You claim that the parole records you have marked are excepted from disclosure under section 552.101 in conjunction with section 508.313 of the Government Code. Section 508.313 provides in pertinent part 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 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.
>
> . . .
>
> (f) This section does not apply to information that is subject to required public disclosure under Section 552.029 [of the Government Code].

Gov't Code § 508.313(a), (b), (f). A releasee is a person released on parole or to mandatory supervision. *Id.* § 508.001(9). You state that the information you have marked under section 508.313 "is held by the [department's] Parole Division . . . as part of [the former inmate's] parole files." After reviewing your arguments and the information at issue, we agree that this information is confidential pursuant to section 508.313. The requestor is not an entity authorized to obtain this information under section 508.313(c). This information is also not made public under section 552.029 of the Government Code. *See id.* § 508.313(f).

We therefore conclude that the department must withhold this information under section 552.101 of the Government Code.

We next address your claim under section 552.134 of the Government Code. Section 552.134(a) relates to inmates of the department and provides in relevant part as follows:

> (a) 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.

Gov't Code § 552.134(a). Section 552.134 is explicitly made subject to section 552.029. Section 552.029 states as follows:

> Notwithstanding . . . Section 552.134, the following 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 Section 552.021:
>
> . . .
>
> > (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.

Id. § 552.029(8). The remaining submitted information pertains to a former inmate for purposes of section 552.134. However, under section 552.029, basic information regarding an incident of an alleged crime involving an inmate is subject to required disclosure. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. The remaining submitted information includes several investigations related to incidents of alleged crimes involving inmates. The basic information regarding these incidents must be released pursuant to section 552.029(8). The department must withhold the remaining information at issue under section 552.134 of the Government Code.

In summary, the department must (1) release the arrest warrant and arrest warrant affidavit pursuant to article 15.26 of the Code of Criminal Procedure; (2) withhold the parole information you have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code; (3) with the exception of basic information that is subject to section 552.029(8) of the Government Code, withhold the remaining

information in accordance with section 552.134 of the Government Code; and (4) release the basic information that is subject to section 552.029(8). As we are able to make these determinations, we need not address your remaining arguments against disclosure.

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 ten 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

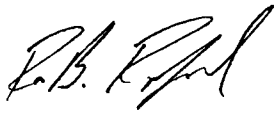
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 240946

Enc. Submitted documents

c: Ms. Wynthia J. Cheatum
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(w/o enclosures)