



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2006

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

OR2006-12334

Dear Mr. Frazier:

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#261198.

The Texas Department of Criminal Justice ("TDCJ") received a request for the requestor's parole fee payment history. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that TDCJ has not complied with the time periods prescribed by section 552.301 of the Government Code in submitting your request for a decision to this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address TDCJ's argument against disclosure of the requested information under this exception. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

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,

including section 508.313 of the Government Code. Section 508.313 of the Government Code 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). You indicate that the submitted information relates to a releasee and is maintained by TDCJ's Parole and Mandatory Supervision Division. A releasee is a person released on parole or to mandatory supervision. *Id.* § 508.001(9). You state that the submitted information was "not made with the idea of informing parolees of necessary information; it was rather to help TDCJ's parole division manage releasees." Pursuant to section 552.303 of the Government Code, we requested further argument in support of your claim under section 508.313(a) of the Government Code.

You have responded that the submitted information does not constitute information made public by section 508.313(b) of the Government Code as it is "detailed information regarding the regular, ongoing supervision of an individual releasee—not mere statistics or data." You further explain that the submitted information enables TDCJ to "track the releasee's progress in making the required payments, reducing the balance and complying with those conditions of his parole or mandatory supervision." You also assert that the submitted information "can become relevant to and can be relied upon in revocation proceedings." Thus, we understand you to claim that the submitted information is not "statistical information" or "data" for section 508.313(b) purposes.

Based on your argument and our review, we agree that the submitted information is confidential pursuant to section 508.313 of the Government Code. The requestor is not an entity authorized to obtain this information under section 508.313(c) of the Government Code. This information is also not made public under section 552.029 of the Government Code. *See id.* § 508.313(f). Accordingly, TDCJ must withhold the submitted information under section 508.313 of the Government Code.

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, 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 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Holly R. Davis". The signature is fluid and cursive, with the first name being the most prominent.

Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/eb

Ref: ID# 261198

Enc. Submitted documents

c: Mr. Willie E. Williams
2000 Skyline Drive, #724
McKinney, Texas 75071
(w/o enclosures)