



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2006

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

OR2006-13753

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# 264975.

The Texas Department of Criminal Justice (the "department") received three requests for information about a named inmate and Reid Correctional Facility. You claim that the submitted information is exempted 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.¹

Section 552.134 of the Government Code relates to inmates of the department and provides in relevant part the following:

- (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 exempted from [required public disclosure]

¹To the extent any additional responsive information existed on the date the system received this request, we assume you have released it. If you have not released any such records, you must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 552.029 provides that notwithstanding section 552.134, eight specified categories of "information about an inmate who is confined in a facility operated by or under a contract with [the department are] subject to required disclosure[.]" *Id.* § 552.029. These eight categories of information include "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).

You state that the submitted information concerns inmates confined in a facility operated by the department. Thus, we agree that section 552.134 is applicable to the information you have marked. However, portions of the submitted documents relate to information which is subject to required disclosure under section 552.029 of the Government Code, including crimes involving inmates. Thus, while the department must generally withhold the information you have marked under section 552.134, the department must release basic information regarding crimes involving inmates pursuant to section 552.029(8).²

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 statute, including section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained [by the Texas Department of Criminal Justice], 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 Texas Department of Criminal Justice] 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.

²Basic 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.

(c) The [Texas Department of Criminal Justice], on request or in the normal course of official business, shall 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] or a parole commissioner;
- (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.

...

(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); *See also id.* §508.001 (“releasee” means a person released on parole or to mandatory supervision). We note that section 508.313 is explicitly made subject to section 552.029 of the Government Code. *See id.* § 508.313(f); §552.029(8).

You inform us that the information you have marked is maintained by the department’s parole division as a part of the inmate’s parole file. After reviewing your arguments and the submitted information, we agree that the information you have marked is made confidential by section 508.313 and may only be released in accordance with that statute. Furthermore, the requestor is not an entity authorized by section 508.313(c) to obtain this information. Accordingly, the department must generally withhold the information you have marked under section 552.101 in conjunction with section 508.313 of the Government Code. We note, however, that a portion of this information relates to crimes by parolees that were committed while they were incarcerated. Thus the department must release basic information regarding crimes involving inmates pursuant to section 552.029(8) of the Government Code.

A portion of the basic information involves a sexual assault. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In Open Records Decision

No. 393 (1983), this office concluded that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982). Accordingly, the marked identifying information must be withheld under section 522.101 in conjunction with common-law privacy.

Section 552.101 also encompasses laws that make criminal history record information (“CHRI”) confidential. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). However, the definition of CHRI does not include driving record information maintained by the DPS under chapter 521 of the Transportation Code. *See* Gov’t Code § 411.082(2)(B). We agree that the remaining marked CHRI must be withheld under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

In summary, with the exception of the basic information that must be released under section 552.029(8) of the Government Code, the department must withhold the information you have marked subject to section 552.134 of the Government Code. With the exception of basic information that must generally be released under section 552.029(8), the department must also withhold the information you have marked under section 552.101 in conjunction with section 508.313. A portion of the basic information, which we have marked, must be withheld under section 552.101 in conjunction with common-law privacy. The remaining CHRI information you have marked must be withheld under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.³

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

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/sdk

Ref: ID# 264975

Enc. Submitted documents

c: Mr. Robert Hilliard
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(w/o enclosures)