



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2007

Ms. Patricia Fleming
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2007-16352

Dear Ms. Fleming:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 295597.

The Department of Criminal Justice (the "department") received three requests from the same requestor for (1) "[i]nformation on the 9 or 10 offenders from the Texas Youth Commission who were voted and approved for special conditions by the SISP panel last Friday, including names, SIDS numbers and special conditions approved in each case," (2) "[p]rintouts of complete Public Information Data screens for those offenders," (3) "[t]ransmittals submitted by the Parole Division recommending special conditions on those same offenders," (4) "[a]ny other information on any offenders that has been sent to your agency by the Texas Youth Commission since June 8, 2007," (5) "[a]ny correspondence from the Texas Youth Commission to the [department] approving those offenders for transfer to the [department]," and (6) "[a]ny correspondence and information from the Texas Youth Commission to the [department] that was presented to the Board of Pardons and Paroles, including any recommendations or suggestions for special conditions." 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.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 section encompasses information that other statutes make confidential. Section 61.084 of the Human Resources Code provides for the transfer of youth offenders over the age of 19 to the Texas Department of Criminal Justice Parole Division and states, in pertinent part:

(e) Except as provided by Subsection (g), the commission shall discharge from its custody a person not already discharged on the person’s 19th birthday.

(f) The [Texas Youth Commission] shall transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, or who has been returned to the [Texas Youth Commission] under section 54.11(i)(1), Family Code, to the custody of the pardons and parole division of the Texas Department of Criminal Justice to serve the remainder of the person’s sentence on parole as provided by Section 508.156, Government Code, when the person is released under supervision after becoming 19 years of age.

(g) The [Texas Youth Commission] shall transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, or who has been returned to the [Texas Youth Commission] under section 54.11(i)(1), Family Code, to the custody of the Texas Department of Criminal Justice on the person’s 19th birthday, if the person has not already been discharged or transferred, to serve the remainder of the person’s sentence on parole as provided by Section 508.156, Government Code.

Hum. Res. Code § 61.084 (e), (f), (g).

Section 508.156 of the Government Code provides in pertinent part:

(a) Before the release of a person who is transferred under section 61.081(f) or 61.084(f) or (g), Human Resources Code, to the [Texas Department of Criminal Justice Parole Division] for release on parole, a parole panel shall review the person’s records and may interview the person or any other person the panel considers necessary to determine the conditions of parole. The panel may impose any reasonable condition of parole on the person that the panel may impose on an adult inmate under this chapter.

Gov’t Code § 508.156(a).

We are informed by both the department and the Board of Pardons and Paroles (the “board”) that the information at issue relates to Texas Youth Commission offenders who were transferred to the department’s Parole Division for supervision under subsections 61.084(f)

and/or (g) of the Human Resources Code. Section 508.156 of the Government Code provides for the review of the youth offender's records by a parole panel prior to the release of the offender under section 61.084 of the Human Resources Code.

Section 508.003 of the Government Code states, in relevant part:

(b) Except as provided by Subsection (c), this chapter does not apply to release on parole from an institution for juveniles.

(c) The provisions of this chapter not in conflict with Section 508.156 apply to parole of a person from the Texas Youth Commission under that section.

Gov't Code § 508.003 (b), (c).

Section 508.313 of the Government Code 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 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.

(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 Texas Department of Criminal Justice] may provide information that is confidential and privileged under Subsection (a) to:

(1) the governor;

(2) a member of the board 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.

Gov't Code § 508.313(a)-(c); *see also id.* § 508.001(9) (“releasee” means person released on parole or to mandatory supervision).

Both the department and the board assert that section 508.003(c) of the Government Code governs those Texas Youth Commission offenders who are released on parole as provided by section 508.156(a) of the Government Code. The board and department assert that because section 508.313 does not conflict with section 508.156, section 508.313 applies to the requested information. Based on the arguments of the department and the board, as well as our review of the applicable statutes and the submitted information, we conclude that most of the submitted information is excepted from disclosure under section 508.313(a) in conjunction with section 552.101 of the Government Code. However, 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. Gov't Code § 508.313(b). Thus, with the exception of information that must be released under section 508.313(b), the submitted information must be withheld under section 508.313(a) in conjunction with section 552.101 of the Government Code.² Because our ruling on this issue is dispositive, we need not address your remaining arguments.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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

²Section 508.313(e) provides that section 508.313 does not apply to information relating to a sex offender that is authorized for release under chapter 62 of the Code of Criminal Procedure. Section 508.313(f) provides that section 508.313 does not apply to information that is subject to required public disclosure under section 552.029 of the Government Code.

³The department also asks this office to opine on “the perceived inconsistency between [the Texas Youth Commission’s] decreased jurisdiction under amended section 61.084(e) [of the Human Resources Code] and the unamended definition of “child” in section 61.006(6) [of the Human Resources Code].” Because that question is outside the scope of the disposition of the information at issue, we do not address it at this time.

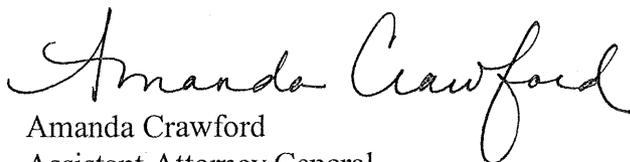
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/sdk

Ref: ID# 295792

Enc. Submitted documents

c: Mr. Mike Ward
Austin American-Statesman
305 South Congress Avenue
Austin, Texas 78704
(w/o enclosures)