



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2007

Ms. Shelia A. Lindsey
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2007-16401

Dear Ms. Lindsey:

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# 297170.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a former inmate and a specified time interval. You state that some of the requested information either has been or will be released. You claim that other responsive information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the department did not comply with section 552.301 of the Government Code in requesting this decision. Under section 552.301(b), a governmental body must ask this office for a decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of a written request for information. *See Gov't Code* § 552.301(b). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ). Thus, because the department did not request this decision within the ten-business-day period prescribed by section 552.301(b), the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when the

information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). In this instance, the department's claims under sections 552.101 and 552.134 of the Government Code can provide compelling reasons for non-disclosure. Accordingly, we will consider your arguments.

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 exception encompasses information that other statutes make confidential. Section 290dd-2 of title 42 of the United States Code provides in part:

(a) Requirement. Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

42 U.S.C. § 290dd-2(a); *see* 42 C.F.R. § 2.1 (records of identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with performance of drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of United States are generally confidential). We understand that the department operates a federally funded substance abuse treatment program. We note that federal law allows for the release of a patient's substance abuse records upon proper written consent. 42 C.F.R. §§ 2.15, .31, .33; *see* 42 U.S.C. § 290dd-2(b)(1). Accordingly, the substance abuse records that you have marked may be released only as provided under section 290dd-2 of title 42 of the United States Code and sections 2.15, 2.31, and 2.33 of title 42 of the Code of Federal Regulations.

Section 552.101 also encompasses section 508.313 of the Government Code, which 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;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

Gov't Code § 508.313(a); *see id.* § 508.001(9) ("releasee" means person released on parole or to mandatory supervision). You state that some of the submitted information is contained in a releasee's parole file. You do not indicate that the requestor represents an eligible entity that is authorized to obtain the information in question under section 508.313(c). *See id.* § 508.313(c)-(d).¹ Furthermore, none of the information in question appears to be subject to chapter 62 of the Code of Criminal Procedure or section 552.029 of the Government Code. *See id.* § 508.313(e)-(f).² We therefore conclude that the department must withhold the parole records that you have marked under section 508.313 of the Government Code.

Section 552.134 of the Government Code encompasses information relating to inmates of the department. Section 552.134(a) states that "[e]xcept as provided by [section 552.134(b)] or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] 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." *Id.* § 552.134(a). Section 552.029 of the Government Code 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 under the Act. *See id.* § 552.029. You contend that section 552.134(a) is applicable to the rest of the submitted information. We have reviewed that information and agree that it falls within the scope of section 552.134. Furthermore, we find that none of the information in question is subject to section 552.029. We therefore conclude that the department must withhold the remaining information under section 552.134 of the Government Code.

In summary: (1) the marked substance abuse records may be released only as provided under section 290dd-2 of title 42 of the United States Code and sections 2.15, 2.31, and 2.33 of title 42 of the Code of Federal Regulations; (2) the marked parole records must be withheld under section 552.101 of the Government Code in conjunction with section 508.313 of the

¹Section 508.313(c) provides for the release of information that is confidential under section 508.313(a) to the governor, a member of the board of pardons and paroles or a parole commissioner, the criminal justice policy council, or an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose. Section 508.313(d) provides that "eligible entity" means a government agency, an organization with which the Department of Criminal Justice contracts or an organization to which the department provides a grant, or an organization to which inmates are referred for services by the department.

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.

Government Code; and (3) the remaining information must be withheld under section 552.134 of the Government Code. As we are able to make these determinations, we need not address your other 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 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).

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).

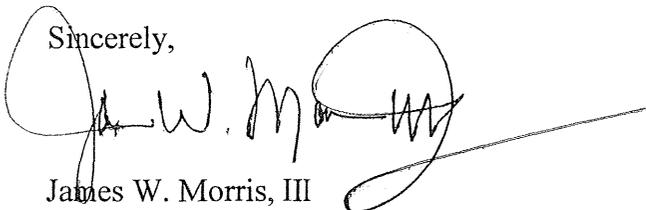
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large, circular flourish at the beginning and a long, sweeping horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 297170

Enc: Submitted documents

c: Mr. Robert Herrera, Jr.
8627 London Heights
San Antonio, Texas 78254
(w/o enclosures)