



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2008

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

OR2008-09323

Dear Ms. Fleming:

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# 315233.

The Texas Department of Criminal Justice (the "department") received a request for information related to restitution owed and paid by offenders on parole. 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. We have also received comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, based on the comments submitted by the requestor, it appears that there is some debate pertaining to whether the submitted information is responsive to an earlier request by the requestor's client. The requestor indicates that because the department did not timely request a ruling on this information, the department has waived its claim that the information is confidential. *See* Gov't Code §§ 552.301(b) (governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request); 552.302 (failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released). However, without needing to resolve the factual dispute over whether the submitted

information is responsive to the earlier request, we note that the department only seeks to withhold the submitted information under section 552.101 of the Government Code. Section 552.101 is a mandatory exception and can provide a compelling reason to overcome the presumption of openness under section 552.302. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Thus, even if the department failed to comply with the requirements of section 552.301, we would still address the department's arguments under section 552.101. Accordingly, we will address the 552.101 arguments in this instance.

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. Section 552.101 encompasses 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.

Gov't Code § 508.313(a); *see also id.* § 508.001(9) ("releasee" means a person released on parole or to mandatory supervision). The department asserts that the submitted information is "held by the Parole Division as part of the information about each person released from prison on mandatory supervision or parole who has been ordered to pay restitution." After reviewing the department's arguments and the submitted information, we agree that this information is subject to section 508.313. You do not inform us that the requestor is an entity authorized to obtain the submitted 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 the submitted information under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

The requestor argues, however, that because the department previously released the submitted information, it has waived its claim that the information is confidential under section 508.313 of the Government Code. Section 552.007 of the Government Code generally prohibits selective disclosure of information that a governmental body has voluntarily made available to any member of the public. *See id.* § 552.007(b). However, even if a governmental body releases information to one member of the public, the Act's exceptions to disclosure are not waived if the information is deemed confidential under the Act. Open Records Decision Nos. 490 (1988), 400 (1983). In this instance, the submitted information is confidential under 508.313 of the Government Code. Thus, regardless of whether the department previously released the information at issue, it must now withhold the information pursuant to section 552.101 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 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). If the governmental body does not file suit over 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).

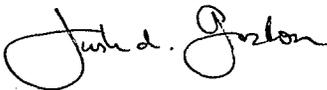
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 315233

Enc. Submitted documents

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