



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2008

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

OR2008-10572

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# 316373.

The Texas Department of Criminal Justice (the "department") received two requests from the same requestor for a specified Parole Division manual currently in effect, and the version of the same manual in effect prior to that of the current manual. You assert that a portion of the information that you have submitted is not subject to disclosure under the Act. You also claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

You initially contend that some of the submitted information does not consist of public information that is subject to disclosure under the Act. The Act applies only to "public information." *See id.* § 552.021. Section 552.002 of the Act defines public information as

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

¹We assume that, to the extent any additional responsive information existed when the department received the request for information, you have released it to the requestor. If not, then you must do so immediately. *See* Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, is not the kind of information that is made public under section 552.021 of the Act. *See* Open Records Decision No. 581 at 6 (1990) (construing predecessor statute). In this instance, you state that the sole purpose of the submitted “references to UCR screens and their respective contents” are the maintenance and manipulation of data concerning inmates in correctional facilities operated by the department. Upon review, we find that you have failed to adequately demonstrate that the “references to UCR screens and their respective contents” function solely as tools to maintain, manipulate, or protect public property and have no other significance. *Id.* We therefore conclude that all of the submitted information is subject to the Act and must be released, unless it falls within the scope of an exception to disclosure. *See* Gov’t Code §§ 552.002 (a), .021.

Next, we must address the department’s procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general’s decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). Additionally, under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e).

In this instance you state that the department received the request for information on May 1, 2008. However, the requestor has submitted to this office a copy of a prior request dated April 17, 2008, requesting

a copy of the manual/handbook [a specified] excerpt is from. If the manual/handbook has been revised since September 1, 2004, please provide a copy of the version currently in effect.

The department acknowledges receipt of the April 17th request. The department states that the manual in effect on April 17th was then under revision, but had not been revised since 2004; therefore, no revised version was in existence to provide the requestor. However, regardless of any revisions made to the 2004 manual, we note that the requestor asked for the

manual currently in effect containing the specified excerpt. The department contends that it did not respond to this portion of the request because it believed the requestor already had a copy of the manual currently in effect, and thus was only seeking a revised version of the manual. We disagree with this interpretation. Because the department did not release the requested manual currently in effect or request a ruling from this office seeking to withhold this information under an exception in the Act until May 15, 2008, after it received the May 1st request for the same information, we find that the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code. *See id.* § 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's 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 unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *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). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code, this is a discretionary exception that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the department has waived section 552.108 and may not withhold any of the submitted information under this exception. As you raise no further exceptions against the disclosure of this information, the submitted information must be released.

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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 316373

Enc. Submitted documents

c: Ms. Yolanda Torres
P.O. Box 515
Huntsville, Texas 77342-0515
(w/o enclosures)