



August 22, 2000

Ms. Regina T. Grimes  
Office of the General Counsel  
Texas Department of Criminal Justice  
P O Box 13401, Capitol Station  
Austin, Texas 78711

Dear Ms. Grimes:

Enclosed please find a corrected copy of ID# 138342 (OR2000-3191). The original document sent to you inadvertently was not signed. We apologize for any inconvenience this oversight may have caused.

Sincerely,

Precilla Rodriguez  
Secretary to:  
Noelle Letteri  
Assistant Attorney General  
Open Records Division

NCL/pr

Ref: ID# 138342

cc: Mr. Mike Ward  
Austin American-Statesman  
P O Box 670  
Austin, Texas 78767  
(w/enclosure)



August 21, 2000

Ms. Regina Grimes  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 13401, Capitol Station  
Austin, Texas 78711

OR2000-3191

Dear Ms. Grimes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138342.

The Texas Department of Criminal Justice (the "department") received a request for 1) the names of each parole member who approved the placements of certain sex offenders at the Comstock Transitional Treatment Center and the dates on which those approvals were made, and 2) copies of the requests for the waivers in these cases, from the parole division's central office to the parole members, and copies of the parole members' approval of those waivers in whatever form that approval exists. You state that the information responsive to part 1 of the request has been released to the requestor. You claim that part 2 of the requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.<sup>1</sup>

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as 508.313 of the Government Code. Section 508.313 of the Government Code accords confidentiality to the records of the Board of Pardons and Paroles. Open Records Decision No. 190 at 2 (1978); *see also* Attorney General Opinion H-427 (1974); Open Records Decision No. 33 (1974). Section 508.313

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<sup>1</sup>We 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

provides:

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 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. You inform us that the submitted representative samples of information are from the Parole Division's file records obtained and maintained for the Board of Pardons and Paroles that relate to the parolees. You state that prior to being released on parole, each of the offenders was previously an inmate of the department. You state, therefore, that all the information contained on each submitted page of information relates to "an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency" and to "a person directly identified in any proposed plan of release for an inmate," thus making this information confidential under section 508.313

After reviewing your arguments and the submitted information, we conclude that the submitted information are records obtained and maintained by the Board of Pardons and Paroles and fall within the purview of section 508.313 of the Government Code. Consequently, we find that the submitted representative samples of information are confidential under section 552.101 in conjunction with section 508.313 of the Government Code.<sup>2</sup>

We also note that the requestor states section 141.71 of title 37 of the Texas Administrative Code makes the submitted information available for public inspection as the information represents the minutes of the board and parole panels. *See* 37 T.A.C. § 141.71. Section 141.71 of the Texas Administrative Code states that

[a]ll minutes of the board and parole panels, final decisions relating to parole, pardons, and clemency, statistical and general information concerning the parole program and system, including the names of paroled

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<sup>2</sup>We note, however, that to the extent the requested information contains information relating to a sex offender that is authorized for release under Chapter 62 of the Code of Criminal Procedure, such information is not subject to section 508.313 but must be released only in accordance with Chapter 62. *See* Gov't Code § 508.313(e); Code of Crim. Proc. § 62.01, *et seq.*

matters of public record and subject to public inspection during normal business hours except as limited by exceptions recognized under common law and the Texas Open Records Act.

37 T.A.C. § 141.71. In this instance, we find that the availability of information covered by section 141.71 of the Texas Administrative Code is limited by exceptions recognized by the Texas Open Records Act.<sup>3</sup> The submitted representative samples of information are excepted from public disclosure by section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. Accordingly, the information may only be released in accordance with the above discussion.

Because we were able to make a determination under section 552.101 of the Government Code, we need not discuss your claimed exception under section 552.111. 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 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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).

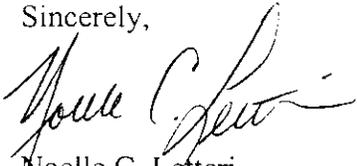
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<sup>3</sup>The Texas Open Records Act is now the Public Information Act that is codified in the Texas Government Code at chapter 522. See Act of May 4, 1993, 73<sup>rd</sup> Leg., R.S., ch. 268, § 46, 1993 Tex. Gen. Laws 583, 594-607.

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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,



Noelle C. Letteri  
Assistant Attorney General  
Open Records Division

NCL/pr

Ref: ID# 138342

Encl. Submitted documents

cc: Mr. Mike Ward  
Austin American-Statesman  
P. O. Box 670  
Austin, Texas 78767  
(w/o enclosures)