



April 3, 2001

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-1326

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145574.

The Texas Department of Criminal Justice (the "department") received a request for "a copy of the Investigative Report and any related documents" regarding an internal investigation beginning in March, 2000, concerning the requestor. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You assert that the responsive documents include the parole file of an inmate released from the custody of the department and therefore is confidential and privileged under section 508.313 of the Government Code. In pertinent part, section 508.313 states:

(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 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.

A releasee is a person released on parole or to mandatory supervision. Gov't Code § 508.001(9). After reviewing your arguments and the submitted information, we agree that the parolee's file is made confidential by section 508.313 and may only be released in accordance with that statute.¹

Next, you assert that the responsive documents contain a transcription of grand jury testimony, which is confidential and may not be released in accordance with article 20.02 of the Code of Criminal Procedure. Article 20.02(a) of the Code of Criminal Procedure states, "[t]he proceedings of the grand jury shall be secret." Thus, information that reveals the proceedings of the grand jury is confidential under article 20.02(a) of the Code of Criminal Procedure and excepted from disclosure under section 552.101 of the Government Code. We conclude that the department must withhold the transcript of the grand jury proceeding under article 20.02(a).

Lastly, we note that the information pertaining to the internal investigation is a completed investigation, and normally must be released pursuant to section 552.022(a)(1) of the Government Code. Section 552.022 makes "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" public information unless expressly made confidential under other law or "except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1). You claim the criminal investigation is excepted under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the requested information pertains to a criminal investigation into allegations that the requestor failed to cooperate with a grand jury and obstructed an investigation of capital murder. Additionally, you assert the investigation was closed with a "no evidence" finding, and therefore is excepted under section 552.108(a)(2) of the Government Code. We agree that section 552.108(a)(2) applies, and therefore conclude you may withhold the criminal investigation under section 552.108(a)(2) of the Government Code.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. – Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

¹Because we have ruled the parole file must be withheld under section 508.313 of the Government Code, we do not address your section 552.131 claim.

In summary, you must withhold the parole file and the transcript of the grand jury proceedings. The investigative report may be withheld in its entirety under section 552.108(a)(2) with the exception of the basic information as defined in *Houston Chronicle Publishing Co.*

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).

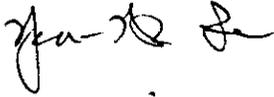
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

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).

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 General Services Commission 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 'Yen-Ha Le', written in a cursive style.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/er

Ref: ID# 145574

Encl. Submitted documents

cc: Ms. Rebecca Euers
P.O. Box 1332
Manchaca, Texas 78652
(w/o enclosures)