



June 12, 2001

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

OR2001-2483

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# 148305.

The Texas Department of Criminal Justice (the "department") received a request for the supervision records, prison records, and all other relevant documents pertaining to a specific inmate. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We are also in receipt of a supplemental brief sent by Mr. James L. Hall, Associate General Counsel of the department, which raises section 552.131 of the Government Code as an exception to disclosure for an additional set of submitted documents. We have considered the exceptions claimed and have reviewed the submitted representative sample documents.¹

We first address the information submitted to us by Mr. Hall. Section 552.301 of the Government Code provides in pertinent part:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

¹ 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). This open records letter does not reach, and does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a),(b). You state that the department received this request for information on March 26, 2001. We did not receive the department's request for a decision on the information submitted by Mr. Hall until April 17, 2001. Thus, we did not receive the request for decision on this particular information within 10 business days of the department's receipt of the request for information. See Gov't Code § 552.301(b). If a governmental body does not request an attorney general decision as provided by section 552.301, the information at issue is presumed public. See Gov't Code § 552.302; see also *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). A governmental body must demonstrate a compelling reason why the information must be withheld from disclosure to overcome a presumption that information is public. See Gov't Code § 552.302. Normally, a compelling reason is shown if the information is confidential under other law or if third party interests are at stake. See Open Records Decision No. 150 at 2 (1977). The applicability of section 552.131 of the Government Code provides a compelling reason to overcome the presumption of openness. Therefore, we will address the department's section 552.131 claim.

Section 552.131 states in pertinent part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code, § 552.131(a). Although the individual who is the subject of this request for information is no longer confined in a department facility, we conclude that the information submitted by Mr. Hall is excepted from disclosure under section 552.131 since the information is about an inmate. We note, however, that section 552.131 is specifically made subject to section 552.029 of the Government Code. Therefore, with the exception of information made public by section 552.029, the department must withhold this information from disclosure pursuant to section 552.131 of the Government Code.

You claim that the information submitted at Tab 1 is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 508.313 of the

Government Code.² Section 508.313 accords confidentiality to the records of the Board of Pardons and Paroles. *See* Open Records Decision Nos. 33 (1974), 190 at 2 (1978); *see also* Attorney General Opinion H-427 (1974). Section 508.313 provides as follows:

(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.

(b) Statistical and general information relating to the parole and mandatory supervision system, including the names of releasees and data recorded relating to parole and mandatory supervision services, is not confidential or privileged and must be made available for public inspection at any reasonable time.

(c) The department may provide information that is confidential and privileged under Subsection (a) to:

- (1) the governor;
- (2) a member of the board;
- (3) the Criminal Justice Policy Council in performing duties of the council under Section 413.021; or
- (4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

(d) In this section, "eligible entity" means:

² Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

- (1) a government agency, including the office of a prosecuting attorney;
- (2) an organization with which the department contracts or an organization to which the department provides a grant; or
- (3) an organization to which inmates are referred for services by the department.

(e) This section does not apply to information relating to a sex offender that is authorized for release under Chapter 62, Code of Criminal Procedure.

(f) This section does not apply to information that is subject to required public disclosure under Section 552.029.

Gov't Code § 508.313.

You inform us that the submitted documents at Tab 1 are from the Parole Division's file records obtained and maintained for the Board of Pardons and Paroles. You also state that the documents at Tab 1 pertain 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." After reviewing your arguments and the submitted documents at Tab 1, we conclude that the documents are records obtained and maintained by the Board of Pardons and Paroles that are governed by section 508.313 of the Government Code.

We note, however, that these documents contain a large amount of information that relates to a sex offender that was authorized for release under Chapter 62 of the Code of Criminal Procedure.³ 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. *See* Gov't Code § 508.313(e). Article 62.02(b) of the Code of Criminal Procedure requires a sex offender registrant to provide the Texas Department of Public Safety ("DPS") with the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a photograph of the person; a complete set of the person's fingerprints; the type of offense the person was convicted of; the age of the victim; the date of the conviction; the punishment received; an indication as to

³ A person who has a "reportable conviction or adjudication" under Chapter 62 shall register with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days. *See* Crim. Proc. Code art. 62.02(a). The inmate here was convicted of "burglary with the intent to commit sexual assault," a "reportable conviction" pursuant to article 62.01(5)(D) of the Code of Criminal Procedure. Therefore, the inmate was required to register particular information with the Texas Department of Public Safety. *See id.*

whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; and any other information required by DPS. *See* Crim. Proc. Code art. 62.02(b). This information is generally public information with the exception of the person's social security number, driver's license number, telephone number; all information required by DPS outside of the enumerated categories of information; and any information that would identify the victim of the offense for which the person is subject to registration. *See* Crim. Proc. Code art. 62.08(b). Therefore, with the exception of the information governed by Chapter 62 of the Code of Criminal Procedure, the department must withhold the documents at Tab 1 under section 552.101 in conjunction with section 508.313 of the Government Code.

You claim that the documents at Tab 2 are protected from disclosure by section 552.101 of the Government Code in conjunction with Chapter 119 of the Florida Public Records Statutes. However, section 552.101 does not incorporate the confidentiality provisions of other states' statutes and regulations because those laws only govern the disclosure of information held by those states. *But see* Open Records Decision No. 561 at 6-7 (1990) (noting that if agency of federal government shares its information with Texas governmental entity, Texas entity must withhold information that federal agency determined to be confidential under federal law). Accordingly, you may not withhold the documents at Tab 2 under section 552.101 in conjunction with Florida state law.

You also claim that the submitted documents at Tab 2 are excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a), (b). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the release of Tab 2 would interfere with ongoing law enforcement activities concerning numerous multi-state crimes and multi-state criminal

judicial proceedings, especially with regard to Florida. You further state that this information was provided to department staff with the express proviso of confidentiality. Based on your arguments that the release of the information would interfere with the law enforcement interests of another governmental body, we conclude that the documents at Tab 2 are excepted from disclosure under section 552.108(a)(1). *See* Open Records Decision Nos. 586 (1991), 474 (1987), 372 (1983) ("law-enforcement exception" may be invoked by any proper custodian of information that relates to criminal incident).

We note, however, that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. *See* 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). Therefore, you must release basic information from Tab 2 pursuant to *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing the types of basic information that must be made available to the public).

In summary, you must withhold the documents submitted by Mr. Hall pursuant to section 552.131 of the Government Code. With the exception of information governed by Chapter 62 of the Code of Criminal Procedure, you must withhold the documents at Tab 1 pursuant to section 508.313 of the Government Code. You may withhold the documents at Tab 2 pursuant to section 552.108 of the Government Code. However, basic information from Tab 2 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 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

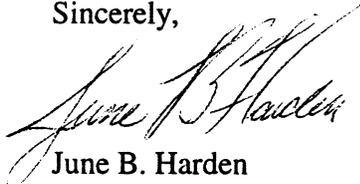
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RJB/seg

Ref: ID# 148305

Encl. Marked documents

cc: Mr. David M. Douglas
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(w/o enclosures)

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