



September 27, 2001

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-4337

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152476.

The Texas Department of Criminal Justice (the "department") received a request for any and all investigative documents pertaining to a certain department internal investigation. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the highlighted portions of the documents submitted to this office in Exhibit 1 are excepted from disclosure under section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). Section 552.107(1) does not except purely factual information from disclosure. *Id.* Section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memos sent. *Id.* at 5.

Based on our review of the submitted information in Exhibit 1, we conclude that a portion of the information at issue consists of client communications or legal advice or opinions which may be withheld from disclosure under section 552.107. We have marked the information accordingly.

We next consider your section 552.101 argument regarding the remainder of the submitted information. Section 552.101 encompasses information protected by other statutes, including section 508.313 of the Government Code. 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.

(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:

(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.

A releasee is a person released on parole or to mandatory supervision. Gov't Code §508.001(9). You assert that the submitted documents in Exhibit 2 contain information relating to offenders of the department's institutional division who are subject to release on parole, mandatory supervision, executive clemency, or to releasees. Based on your representations and our review of the submitted information, we agree that the information in Exhibit 2 is made confidential by section 508.313(a)(2). The requestor does not appear to be an entity authorized to obtain the submitted information under section 508.313(c). Nor does the submitted information appear to be made public under section 552.029 of the Government Code,¹ *see* Gov't Code § 508.313(f), or under chapter 62 of the Code of Criminal Procedure,² *see* Gov't Code § 508.313(g). We therefore conclude that the information that we have marked is excepted from disclosure under section 552.101 of the Government Code, and must not be released to the requestor.

In summary, the marked information in Exhibit 1 which consists of client communications or legal advice or opinions may be withheld from public disclosure under section 552.107. The marked information in Exhibit 2 is excepted from disclosure under section 552.101, and must not be released to the requestor

¹Section 552.029 provides that, notwithstanding sections 508.313 or 552.131, certain information *about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice* is subject to required disclosure under the Public Information Act.

²Chapter 62 of the Code of Criminal Procedure relates to the registration of sex offenders and provides at article 62.08 that *registration information* is to be maintained by the Department of Public Safety in a central database which, with certain exceptions, is public information.

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 "Cindy Nettles". The signature is written in a cursive style with a large initial "C" and a long horizontal stroke.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 152476

Enc. Submitted documents

c: Mr. David Robison
3721 Morningview Drive
Dallas, Texas 75241
(w/o enclosures)