OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

June 7, 2002

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

OR2002-3084

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# 164020.

The Texas Department of Criminal Justice (the "department") received a request for the department's "entire file for [a deceased former inmate], including any disciplinary reports, medical records, files or offenses, work reports, parole reports, etc." You state that you have informed the requestor that he can obtain the medical records with a properly executed release from the deceased former inmate's personal representative. *See* Occ. Code § 159.005(a)(5). You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim the submitted parole file is confidential by law. Section 552.101 of the Government Code 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 such as section 508.313 of the Government Code, which provides:

> (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 indicate that the parole file relates to an offender who was released on mandatory supervision or parole. Furthermore, you state that this file is maintained by the department's Parole Division. Based on your representations and our review of the

submitted information, we agree that the parole file 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). In addition, the submitted information is not 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 parole file is excepted from disclosure under section 552.101 of the Government Code and must not be released to the requestor.

You claim that the submitted prison file is excepted from disclosure by section 552.134 of the Government Code. Section 552.134 of the Government Code relates to inmates of the department and provides in relevant part:

> (a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] 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 § 552.134(a). Section 552.029 of the Government Code provides that, "[n]otwithstanding . . . Section 552.134," eight specified categories of "information about an inmate who is confined in a facility operated by or under a contract with [the department are] subject to required disclosure." Thus, the legislature explicitly made section 552.134 subject to section 552.029.

We agree that section 552.134(a) is applicable to the submitted prison file and find that none of this information is subject to disclosure under section 552.029. Therefore, the prison file is excepted from disclosure in its entirety under section 552.134 of the Government Code.

In summary, the department must withhold all of the submitted 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

---

[1] Section 552.029 provides that, notwithstanding sections 508.313 or 552.134, 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.

[2] Chapter 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.

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).

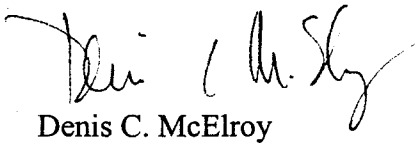
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 164020

Enc. Marked documents

c: Mr. Scott A. Cummings
Suchocki, Bullard & Cummings
One Summit Avenue, Suite 312
Fort Worth, Texas 76102
(w/o enclosures)