



November 21, 2002

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

OR2002-6686

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# 172592.

The Texas Department of Criminal Justice (the "department") received a request for copies of all new information submitted in regard to the parole hearing of a specified inmate. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. You also claim that the requestor does not maintain a special right of access to the requested information under section 552.008 of the Government Code. We have considered the exception 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. Section 508.313 of the Government Code 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.

You indicate that the submitted information relates to an offender who is currently incarcerated in the department's McConnell Unit on three concurrent 30-year sentences. Further, you state that the Parole Board "voted an FI-1 parole recommendation for Inmate Glynn but withdrew the FI recommendation based on information subsequently submitted

to the Board.” The additional information submitted to the Parole Board is the subject of the instant request for information. Based on your representations and our review of the submitted information, we agree that the submitted information is made confidential by section 508.313(a)(1). 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 submitted information is confidential under section 508.313 of the Government Code.

We note, and you acknowledge, that the requestor is a member of the Texas Legislature. You argue, however, that the requestor’s status as a legislator does not grant her a special right of access to the requested information under section 552.008 of the Government Code. In making this argument, you specifically rely on Attorney General Opinion H-427 (1974) in which we ruled that the Public Information Act (the “Act”) does not require the Parole Board to reveal parole files of inmates to an individual legislator that has requested such information. Additionally, in Attorney General Opinion H-353 (1974), we concluded that legislative access to information is limited to information made confidential by the Act and does not grant legislators access to information made confidential by other statutes. However, as you acknowledge, the Act was amended in 1995 by the 74th Legislature and additional language was added to section 552.008. *See* Acts of 1995, 74th Leg., ch. 1035, § 2, eff. Sept. 1, 1995. Section 552.008 now provides in pertinent part as follows:

(a) This chapter does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of

¹Section 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.

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.

state or federal law or waive the right to assert exceptions to required disclosure of the information in the future.

You state that “the wording in question, on its face, provides that a legislator is entitled to receive confidential information as limited by the terms of the [Act]” and that “had the legislature intended for an individual legislator to obtain information made confidential under other law, it would have expressly so stated.” We disagree. Based on the plain language of section 552.008, provided a legislator requests the information for a legislative purpose, a legislator’s entitlement to obtain confidential information is not limited to information made confidential by the Act. Therefore, if the legislator states that she seeks the submitted information for a legislative purpose and otherwise complies with section 552.008, you should provide the submitted information to the requestor pursuant to section 552.008 of the Government Code. Furthermore, we note that this section provides that disclosure of confidential information to a legislator does not affect the confidentiality of the information or the right to assert exceptions in the future regarding that information, and provides specific procedures relating to the confidential treatment of the information. However, if the legislator does not state that she seeks the submitted information for a legislative purpose, then the information must be withheld under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

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 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 172592

Enc: Submitted documents

c: The Honorable Terri Hodge
Texas House of Representatives
4032 Swiss Ave.
Dallas, Texas 75204
(w/o enclosures)