



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 4, 2002

Ms. Catherine C. Kemp
Records Supervisor
Rowlett Police Department
P. O. Box 370
Rowlett, Texas 75030-0370

OR2002-6909

Dear Ms. Kemp:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173116.

The Rowlett Police Department (the "department") received a request for copies of information concerning proof of residency as it pertains to the requestor's husband for a specified period of time. The requestor subsequently clarified her request by providing the department with information that would identify her husband. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). The department has submitted sex offender registration information to us for review as responsive to the request. You indicate that the responsive information, or portions thereof, may be excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the applicability of this exception to disclosure and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes. You indicate that the responsive information, or portions thereof, is excepted from disclosure pursuant to section 552.101 in conjunction with statutory predecessors to chapter 62 of the Code of Criminal Procedure, governing the Sex Offender Registration Program. Before September 1, 1997, registration information pertaining to sex offenders who were convicted

or whose cases were adjudicated prior to September 1, 1995 was confidential.¹ We note, however, that this is not current law. Article 62.11 of the Code of Criminal Procedure now provides in pertinent part that “[t]his chapter applies . . . to a reportable conviction or adjudication occurring on or after September 1, 1970 . . .” Crim. Proc. Code art. 62.11(a). Further, this article only applies to a defendant who, with respect to a reportable conviction or adjudication, is on or after September 1, 1997: 1) confined in a penal institution, as that term is defined in article 62.01(3), or 2) under the supervision and control of a juvenile probation office or an agency or entity operating under contract with a juvenile probation office, the Texas Youth Commission, a community supervision and corrections department, or the pardons and paroles division of the Texas Department of Criminal Justice.² *See id.* historical note (Vernon Supp. 2003) [Act of June 1, 1997, 75th Leg., R. S., ch. 668, § 11(a), 1997 Tex. Sess. Law Serv. 2253, 2264, amended by Act of May 29, 1999, 76th Leg., R.S., ch. 1415, § 26, 1999 Tex. Sess. Law Serv. 4831, 4842].

Thus, under the current version of the law, a sex offender with a reportable conviction or adjudication since September 1, 1970 for which the offender was on or after September 1, 1997 confined in a penal institution or placed under the supervision and control of a juvenile probation office or an agency or entity operating under contract with a juvenile probation office, the Texas Youth Commission, a community supervision and corrections department, or the pardons and paroles division of the Texas Department of Criminal Justice is required by law to register with the appropriate local law enforcement authority.³ *See* Crim. Proc. Code arts. 62.02, .11 and historical note. Article 62.02(b) requires that the Texas Department of Public Safety (the “DPS”) promulgate a form for registering persons required to register under chapter 62. *See id.* The registration form shall require the following information:

- (1) 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, and home address;

¹ *See* Act of May 19, 1995, 74th Leg., R.S., ch. 258, § 16(a), 1995 Tex. Sess. Law. Serv. 2197, 2205 (stating that reportable conviction or adjudication entered before effective date of Act is covered by law in effect when conviction or adjudication occurred or order was entered and referring to predecessor provision of article 6252-13c.1 of Vernon’s Texas Civil Statutes); *see also* Act of May 26, 1991, 72nd Leg., R.S., ch. 572, § 1, 1991 Tex. Gen. Laws 2029, 2029-30 (originally enacting article 6252-13c.1 and providing that person who releases information required for sex offender registration to persons other than law enforcement officers commits Class B misdemeanor); Open Records Decision No. 645 (1996).

² If neither of these conditions are met, however, then a defendant with a reportable conviction or adjudication is covered by the law in effect under section eight of article 6252-13c.1 of Vernon’s Texas Civil Statutes before that section was amended by the 1997 Act and that law is continued in effect for that purpose. *See id.*

³ *See* Code Crim. Proc. art. 62.01(5) (defining “reportable conviction or adjudication”).

- (2) a photograph of the person and a complete set of the person's fingerprints;
- (3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received;
- (4) an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision;
- (5) an indication of each license, defined by Article 62.08(f), that is held or sought by the person; and
- (6) any other information required by the department.

Id. The DPS maintains the information required by article 62.02 in a computerized central database. *See id.*; *see also* Crim. Proc. Code art. 62.08(a). Article 62.08(b) provides:

The information contained in the database is public information, with the exception of any information:

- (1) regarding the person's social security number, driver's license number, or telephone number;
- (2) that is required by the [DPS] under Article 62.02(b)(6); or
- (3) that would identify the victim of the offense for which the person is subject to registration.

Crim. Proc. Code art. 62.08(b).

The submitted information reflects that the sex offender who is the subject of this request has a reportable conviction/adjudication that occurred after September 1, 1970. The information also reflects that on September 1, 1997 this offender was confined in a penal institution, as that term is defined in article 62.01(3) of the Code of Criminal Procedure. Thus, we find that article 62.08(b) of the Code of Criminal Procedure is applicable to this particular sex offender. Accordingly, the submitted information constitutes information that is public with the exception of any information: 1) regarding the offender's social security number, driver's license number, or telephone number; 2) required by the DPS under Article 62.02(b)(6); or 3) that would identify the victim of the offense for which the offender is subject to registration. Consequently, we conclude that the department must release to the requestor the information that we have marked pursuant to article 62.08(b). However, we also conclude that the department must withhold the entirety of the remaining submitted information pursuant to

section 552.101 of the Government Code in conjunction with article 62.08(b) of the Code of Criminal Procedure.

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,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive style with a large, stylized "R" and "B".

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 173116

Enc. Marked documents

cc: Ms. Ann C. Konuk
5809 Belard Street
Portage, MI 49002
(w/o enclosures)