



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 1, 2003

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

OR2003-2934

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# 180322.

The Texas Department of Criminal Justice (the "department") received a written request for certain records pertaining to a death row inmate. You state that most of the responsive information will be released to the requestor. You contend, however, that certain other information coming within the scope of the request is either not subject to the provisions of chapter 552 or are excepted from required disclosure pursuant to sections 552.101 and 552.134 of the Government Code.

We note at the outset that you acknowledge that you did not make a timely request for a decision from this office. Section 552.301(a) of the Government Code requires a governmental body to request a decision from the attorney general within ten business days after receiving a request for information that the governmental body wishes to withhold, unless there has been a previous determination that the requested information is excepted from required public disclosure. You state that the department received the records request on February 10, 2003. However, you did not request a decision from this office until February 27, 2003. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *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). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision No. 150 (1977). Because you contend that the submitted records are either not subject to the provisions of chapter 552 or are confidential under sections 552.101 and 552.134, we will consider your claims.

We first address your contention that three documents you submitted to this office as responsive to the request are either not subject to the provisions of chapter 552 of the Government Code or are excepted from public disclosure pursuant to section 552.134 of the Government Code. Although you contend that these documents consist of "probation records of the judiciary" and thus are not subject to the provisions of chapter 552, *see* Gov't Code § 552.003(B), each of the three documents was created by the department, not by or on behalf of the judiciary; it is not apparent to this office, nor have you otherwise demonstrated, that the department holds these records as an agent of the judiciary; consequently, we conclude that these records are subject to the provisions of chapter 552.

You alternatively argue that these three documents may be withheld from the public pursuant to section 552.134 of the Government Code. With certain exceptions, section 552.134 makes confidential "information obtained or maintained by the Texas Department of Criminal Justice . . . if it is information about an inmate who is confined in a facility operated by or under a contract with the department." You inform us, however, that the inmate in fact was never physically confined to the department in connection with these records. Consequently, we conclude that section 552.134 is inapplicable to these records. Because you have not raised an applicable exception for these documents, we conclude that they must be released to the requestor.<sup>1</sup>

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Among the documents at issue is a presentence investigation report, which is made confidential under section 9(j) of article 42.12 of the Code of Criminal Procedure, and thus must be withheld pursuant to section 552.101 of the Government Code. Article 42.12, section 9(j), provides as follows:

(j) The judge by order may direct that any information and records that are not privileged and that are relevant to a report required by Subsection (a) or Subsection (k) of this section be released to an officer conducting a presentence investigation under Subsection (i) of this section or a postsentence report under Subsection (k) of this section. The judge may also issue a subpoena to obtain that information. A report and all information obtained in connection with a presentence investigation or postsentence

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<sup>1</sup>We note that these records may contain confidential information to which the requestor has a special right of access. *See* Gov't Code § 552.023. If the department receives a subsequent request for these records from another individual, the department must seek another decision from this office at that time.

report are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), (h), (k), and (l) of this section and as directed by the judge for the effective supervision of the defendant. Medical and psychiatric records obtained by court order shall be kept separate from the defendant's community supervision file and may be released only by order of the judge.

Because none of the circumstances described in subsections (d), (e), (f), (h), (k), or (l) appear to be present here, we conclude that the presentence investigation report is made confidential by statute and therefore is excepted from public disclosure under section 552.101 of the Government Code. Accordingly, the department must withhold this document.

Also among the documents at issue is criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") and the Texas Crime Information Center ("TCIC"). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. Consequently, the department must withhold pursuant to chapter 411 all of the submitted CHRI records.

In summary, the department must withhold the submitted presentence investigation report and the submitted CHRI pursuant to section 552.101 of the Government Code. The remaining submitted records must be released to the requestor.

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 Dep't of Pub. 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,



Heather Pendleton Ross  
Assistant Attorney General  
Open Records Division

HPR/RWP/seg

Ref: ID# 180322

Enc: Submitted documents

c: Mr. Vince Gonzales  
820 Buddy Holly Avenue #3  
Lubbock, Texas 79401  
(w/o enclosures)