



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 20, 2003

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

OR2003-4266

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# 183079.

The Texas Department of Criminal Justice (the "department") received a request for the cellular phone bills for a named parole officer for January - March, 2003. You state that the department does not have any responsive information for March, 2003.¹ You further state that some responsive information has been made available to the requestor. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information consists of itemized cellular telephone bills. Section 552.022(a) of the Government Code provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

.....

¹The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body.

Gov't Code § 552.022(a)(3) (emphasis added). We conclude that the submitted bills, in their entirety, comprise "information in an account, voucher, or contract relating to the . . . expenditure of public funds," and therefore, as prescribed by section 552.022, the bills must be released to the requestor unless expressly made confidential under other law. You argue that a portion of the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108, however, is a discretionary exception under the Public Information Act (the "Act") and, as such, does not make information confidential.² See Open Records Decision No. 586 (1991) (governmental body may waive section 552.108). Thus, no portion of the submitted information may be withheld under section 552.108. We next consider whether the information subject to the purview of section 552.022(a) is confidential under the mandatory exceptions you claim.

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. You assert that some of the requested information is about a "releasee" or "a person directly identified in any proposed plan of release for an inmate" and therefore is confidential under section 508.313 of the Government Code. In pertinent part, section 508.313 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.

² Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. See, e.g., Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

(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 of Pardons and Paroles];
- (3) the Criminal Justice Policy Council in performing duties of the council under Section 413.017 [of the Government Code]; 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 [of the Government Code].

A releasee is a person released on parole or to mandatory supervision. Gov't Code § 508.001(9). You state that the information at issue is held by the Parole Division of the department and concerns releasees or inmates of the department subject to release. After reviewing your arguments and the submitted information, we agree that this information is made confidential by section 508.313. 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,³ *see* Gov't Code § 508.313(f), or under chapter 62 of the Code of Criminal Procedure,⁴ *see* Gov't Code § 508.313(g). We therefore conclude that most of the information that you have so marked is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 508.313. However, the numbers that you marked but were unable to conclusively identify as belonging to a parolee may not be withheld under section 552.101.⁵

You also claim that some of the telephone numbers in the submitted information may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(3) excepts from disclosure the home telephone number and personal cellular telephone number of an employee of the department regardless of whether the employee complies with section 552.1175. *See* Gov't Code § 552.117(3). Therefore, the department must withhold the information that you have marked relating to employees of the department that is excepted from disclosure under section 552.117(3).

You further claim that personal cellular telephone numbers of peace officers contained in the submitted information are excepted from disclosure under section 552.117(2), which provides that information that relates to the home address, home telephone number, social security number, or family member information of a peace officer as defined in article 2.12 of the Texas Code of Criminal Procedure must be withheld regardless of whether the officer made an election under section 552.024 of the Government Code to keep such information confidential. We note, however, that the protections of section 552.117 apply only to information that a governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for Gov't Code § 552.117). Thus, section 552.117(2) is inapplicable to the personal cellular telephone numbers of peace officers who are not employees of the department.

Section 552.1175, which also applies to current peace officers, is the applicable exception under these circumstances and provides in part that

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that

³ 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.

⁴ 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.

⁵ As section 552.101 is dispositive, we do not address your section 552.134 claim for this information.

reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). However, you do not inform us, and we are unable to ascertain from our review of the information that you have submitted to us, whether any current peace officer noted in the submitted information has notified the department of his or her election of confidentiality for section 552.1175 information in accordance with the above-cited subsections 552.1175(b)(1) and (2). *See, e.g.,* Open Records Decision No. 678 (2003) (concluding that county voter registrar was authorized to release voter information made confidential under section 552.1175 to another governmental entity, but that transferred information would not be confidential in possession of transferee until that governmental body receives section 552.1175 notification). Thus, if any such current peace officers have complied with section 552.1175(b) with respect to their personal cellular telephone number, the department must withhold such information pursuant to section 552.1175 of the Government Code. If not, the department must release this particular information to the requestor.

In summary, with the exception of the numbers that you were unable to conclusively identify as belonging to a parolee, the information concerning releasees or inmates of the department subject to release that you have marked is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 508.313. The department must withhold the information that you have marked relating to employees of the department that is excepted from disclosure under section 552.117(3). Personal cellular telephone numbers of current peace officers who are not employees of the department must be withheld pursuant to section 552.1175 if the peace officer has complied with section 552.1175(b). For peace officers who do not comply with section 552.1175(b), the department must release this particular information to the requestor. The remaining submitted information 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/lmt

Ref: ID# 183079

Enc. Submitted documents

c: Ms. Amy Erdwurm
1941 East 37th Street
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(w/o enclosures)