



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2005

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

OR2005-00192

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 215877.

The Texas Department of Criminal Justice (the "department") received a request from a former department employee for "all statements written against [the requestor;] all letters written by a specific inmate [;and] the Post Office Box form." You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

You claim that submitted post office boxholder information must be withheld under section 552.101 of the Government Code. This section excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You claim that this form is confidential under section 265.6(d) of Title 39 of the Code of Federal Regulations which provides in relevant part:

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(5) Except as otherwise provided in these regulations, names or addresses of postal customers will be furnished only as follows:

(i) To a Federal, State or local government agency upon prior written certification that the information is required for the performance of its duties

39 C.F.R. § 265.6(d)(5)(i). This section limits the release of information by the postal service. *See generally* 39 C.F.R. § 265.1. You indicate that the department received the information at issue pursuant to this provision. However, you do not direct our attention to any provision that limits or prohibits the subsequent re-release of the information or otherwise makes the information at issue confidential in the possession of the department, nor are we aware of any such provision. We therefore conclude that the post office boxholder information is not confidential in the possession of the department. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). Therefore, the department cannot withhold the post office boxholder information on this basis.

We note that some of the submitted information is confidential under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Therefore, the you must withhold the Texas motor vehicle record information we have marked under section 552.130.

You also claim that some of the submitted information is excepted from disclosure under section 552.134 of the Governmental Code. This section relates to information about inmates of the department and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 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). The submitted witness statements and inmate letters consist of information about an inmate confined in a facility operated by the department. We find that the exceptions in section 552.029 are not applicable. Therefore, you must withhold the information under section 552.134(a) of the Government Code.²

In summary, the department must withhold the submitted witness statements and letters pursuant to section 552.134. The department must also withhold the Texas motor vehicle record information we have marked pursuant to section 552.130. 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).

²Because of our ruling on this issue, we need not address your arguments regarding section 552.117 of the Government Code.

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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 215877

Enc. Submitted documents

c: Ms. Tammy Knight
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Amarillo, Texas 79110
(w/o enclosures)