



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2013

Ms. Patricia Fleming
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2013-05490

Dear Ms. Fleming:

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# 483201.

The Texas Department of Criminal Justice (the "department") received a request for seven categories of information regarding the department's electronic Offender Information Management System database and files, sex offenders on parole or who had parole revoked, and the sex offender supervision program. You state you have released some information to the requestor. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note you have not submitted information responsive to categories one, four, five, six, and seven of the request. Although you state the department submitted a representative sample of information, we find the submitted information is not representative of these types of information. Please be advised this open records letter applies only to the type of information you have submitted for our review. Therefore, this letter ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information is presumed to be public). Thus, to the extent any information responsive to these portions of the request existed when the present request was

received, we assume it has been released.¹ If such information has not been released, then it must be released at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, you state the information responsive to category 2 of the request was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2005-07615 (2005). In Open Records Letter No. 2005-07615, we determined the department need not release information that was not subject to the Act. We have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the department may rely on Open Records Letter No. 2005-07615 as a previous determination and continue to treat the previously ruled upon information in accordance with that ruling.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained [by the department], 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 [of the department] 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.

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism’d); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986).

²As we are able to make this determination, we need not address your remaining arguments against disclosure of this information, including your argument that this information is not subject to the Act.

Id. § 508.313(a); *see id.* § 508.001(9) (“releasee” means a person released on parole or to mandatory supervision). You state the information you have marked consists of parole records that are subject to section 508.313 of the Government Code. You state the requestor in this instance is not authorized to obtain this information under section 508.313(c). *See id.* § 508.313(c). Further, you state this information is not made public under section 552.029 of the Government Code or chapter 62 of the Code of Criminal Procedure. *See id.* § 508.313(e), (f). Accordingly, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

In summary, the department may rely on Open Records Letter No. 2005-07615 as a previous determination and continue to treat the previously ruled upon information in accordance with that ruling. The department must withhold the information you have marked under section 552.101 in conjunction with section 508.313 of the Government Code. The remaining requested information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 483201

Enc. Submitted documents

c: Requestor
(w/o enclosures)