



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2014

Mr. Steve Smeltzer
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Hunstville, Texas 77342-4004

OR2014-15275

Dear Mr. Smeltzer:

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# 534725.

The Texas Department of Criminal Justice (the "department") received a request for (1) copies of two arrest warrants executed on specified dates; (2) any document indicating a named individual was arrested and his current location; (3) any document delineating the difference between an arrest warrant and an emergency arrest warrant, and what the criteria is for an emergency arrest warrant; and (4) any document indicating the individual is a sex offender or was imprisoned for a sex offense. You state some information will be released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention the department did not comply with the procedural requirements of the Act. The requestor asserts he was not timely notified of the department's request for a ruling from this office as required by section 552.301(d) of the Government Code. Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten

business days of receiving the request for information. *Id.* § 552.301(d). The department states it received the request for information on June 10, 2014, and it observed a holiday on June 19, 2014. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Therefore, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was June 25, 2014. The requestor submitted a copy of the envelope in which you inform him of your request for a decision from this office. The envelope in which you submitted notice to the requestor under section 552.301(d) bears a post meter mark of June 26, 2014. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the department failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because sections 552.101 and 552.134 of the Government Code can provide compelling reasons for non-disclosure, we will consider the applicability of these exceptions.

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.

Id. § 508.313(a); *see id.* § 508.001(9) (“release” means a person released on parole or to mandatory supervision). You state the submitted information consists of records of a releasee 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 chapter 62 of the Code of Criminal Procedure or section 552.029 of the Government Code. *See id.* § 508.313(e), (f). Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.¹

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 534725

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.