Office of the Attorney General · State of Texas
John Cornyn

November 27, 2001

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

OR2001-5476

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# 155303.

The Texas Department of Criminal Justice (the "department") received a request for information concerning an incident involving a named inmate. You claim that the requested information is excepted from disclosure under sections 552.117 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022 provides that

> 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:
>
> (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108
>
> . . . . . .

Gov't Code § 552.022(a)(1). You have submitted to this office a completed investigative report from the department's Internal Affairs Division. You state that the investigation is now closed. Therefore, as prescribed by section 552.022, the submitted information must be released to the requestor unless it is confidential under other law or excepted under section 552.108. The department does not raise section 552.108. However, section 552.134 of the Government Code is considered "other law" that makes information confidential. Therefore, we will address your claim under section 552.134 of the Government Code.

Section 552.134(a) of the Government Code states in pertinent 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 information concerns an inmate who is confined in a facility operated by the department. Section 552.029 of the Government Code does not apply to the submitted information. Accordingly, the department must withhold the submitted information from disclosure pursuant to section 552.134 of the Government Code.

As section 552.134 is dispositive, we do not address your other claimed exception.

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 Department of Public 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. 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,

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 155303

Enc. Submitted documents

c: Ms. Jo Ann Sorrells
8315 Citation Avenue
Austin, Texas 78719
(w/o enclosures)