



March 4, 2002

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

OR2002-1049

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# 159332.

The Texas Department of Criminal Justice (the "department") received a request for information relating to an incident in which an inmate was injured. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.134 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that the department has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) provides in relevant part:

(e) A governmental body that requests an attorney general decision . . . must . . . not later than the 15th business day after the date of receiving the written request [for information]:

(1) submit to the attorney general:

(A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; [and]

...

(D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]

Gov't Code § 552.301(e)(1)(A), (D). Section 552.302 provides that “[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.”

You state that the department received this request for information on December 7, 2001. The department then had fifteen business days, or until and including January 3, 2002, in which to comply with section 552.301(e). Both the department's brief in support of its exceptions and its cover letter for the requested information are dated January 7, 2002. We received the department's brief on January 7, 2002. We received the requested information on January 10, 2002. The department has not otherwise demonstrated that it has complied with section 552.301(e) in submitting its brief and the requested information to this office. Consequently, we conclude that the department has failed to comply with section 552.301 in requesting this decision.

The requested information is therefore presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of this information from public disclosure. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived; this exception does not make information confidential or protect third-party interests.¹ The department waived this exception in failing to comply with section 552.301. *See generally Open Records Decision No. 630 at 2-3 (1994)*. However, the department also raises section 552.134 of the Government Code. As this exception can provide a compelling reason for non-disclosure under section 552.302, we will consider the department's arguments under section 552.134.

Section 552.134 of the Government Code relates to inmates of the department. This exception provides in relevant part:

¹*See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *Open Records Decision No. 542 at 4 (1990)* (litigation exception does not implicate third-party rights and may be waived by governmental body).

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] 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). Section 552.029 of the Government Code provides, however, that notwithstanding section 552.134, eight specified categories of "information about an inmate who is confined in a facility operated by or under a contract with [the department are] subject to required disclosure[.]" These eight categories of information include

the inmate's name, identification number, age, birthplace, physical description, or the nature of an injury to or critical illness suffered by the inmate[.]

Gov't Code § 552.029(1). Thus, the legislature explicitly made section 552.134 subject to section 552.029. In this instance, section 552.134(a) is applicable to the requested information. You acknowledge, however, that this information relates to an injury suffered by an inmate. Therefore, the department must disclose the nature of the inmate's injury in accordance with section 552.029(1) of the Government Code. The department must withhold the rest of the requested information under section 552.134 of the Government Code.

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

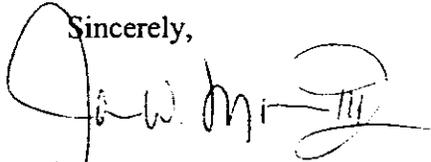
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 159332

Enc: Submitted documents

c: Mr. Jason Khattar
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(w/o enclosures)