OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 3, 2002

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

OR2002-1641

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# 160716.

The Texas Department of Criminal Justice (the "department") received a written request for all records pertaining to a disciplinary action taken against a named inmate. You contend that the requested information is excepted from disclosure under section 552.134 of the Government Code.

We note at the outset that in addition to the above requested information, the requestor has also asked for "the procedure for handling this case, and the method for reviewing information submitted by the inmates, and response by the officials." The requestor has also submitted certain questions to the department regarding the disciplinary action. You do not address either of these requests in your brief to this office.

It is well-established that a governmental body is not required to prepare new information in response to a records request. Open Records Decision No. 342 (1982). Nor does the act require the preparation of information in the form requested by a member of the public. Open Records Decision No. 145 (1976); *see also* Open Records Decision No. 347 (1982). The Public Information Act applies only to information already transcribed into tangible form. *But see* Open Records Decision No. 87 (1975) (governmental body must make good faith effort to relate information it holds to information being requested). We assume the department has made a good faith effort to relate these requests to records held by the

department when responding to the request and that the department has released any responsive records not submitted to this office for review. If it has not, it must do so at this time. *See* Gov't Code §§ 552.301, .302.

We now address the applicability of section 552.134(a) of the Government Code, which provides:

> 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.

Section 552.029 of the Government Code provides:

> Notwithstanding Section 508.313 or [552.134], the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:
>
> . . . .
>
> > (8) *basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.*

Gov't Code § 552.029(8) (emphasis added). Thus, the legislature explicitly made section 552.134 subject to section 552.029. Pursuant to section 552.029(8), "basic information" regarding an alleged crime involving an inmate is subject to required disclosure. The basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident.

The submitted information reflects that the disciplinary action against the inmate stemmed from an alleged crime involving the inmate. We therefore conclude that the submitted records come within the purview of section 552.029(8). Accordingly, the department must release the basic information pertaining to the disciplinary action pursuant to section 552.029 of the Government Code. However, the department must withhold all remaining information pertaining to the disciplinary action pursuant to 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).

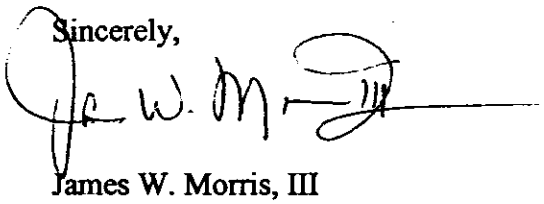
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



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JWM/RWP/sdk

Ref: ID# 160716

Enc: Submitted documents

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