



October 3, 2002

Mr. James M. Frazier III
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2002-5588

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170159.

The Texas Department of Criminal Justice (the "department") received a request for any information relating to the criminal investigation regarding the death of a specified inmate. You inform us that most of the responsive information was previously ruled on in Open Records Letter No. 2001-3511 (2001), in which we concluded that: 1) the "Polygraph Report" must be withheld under section 1703.306 of the Occupations Code; 2) the "Emergency Record" may be released only as permitted by the Medical Practice Act; 3) the department must release to the requestor Part I of the Custodial Death Report and all "basic information" regarding the death of the inmate and the crime involving the inmate; and 4) all remaining information at issue must be withheld from the public pursuant to section 552.134 of the Government Code. In regard to the information previously requested and ruled upon by this office, we conclude that you must continue to rely on Open Records Letter No. 2001-3511 as a previous determination and withhold or release the previously reviewed portions of the requested information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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). However, you claim that the newly acquired information

and audiotape¹ are excepted from disclosure under sections 552.108, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered the comments submitted to this office by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

Section 552.134(a) of the Government Code 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.

Section 552.134 is explicitly made subject to section 552.029. Under section 552.029, basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to required disclosure. The newly acquired information and audiotape pertain to an incident involving the death of a department inmate and an alleged crime involving the inmate. Accordingly, while the department may generally withhold this information under section 552.134, pursuant to section 552.029(8), you must release any basic information regarding this incident found in the newly acquired information. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. As we are able to make this determination, we need not address your remaining arguments.

¹We assume that the "representative sample" of audiotape submitted to this office is truly representative of the requested audiotapes as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested audiotapes to the extent that those tapes contain substantially different types of information than that submitted to this office.

In summary, we conclude that: 1) you must rely on Open Records Letter No. 2001-3511 as a previous determination and withhold or release portions of the requested information in accordance with that ruling; and 2) except for any "basic information" found in the newly acquired information regarding the death of the inmate and the crime involving the inmate, all newly acquired information and audiotapes at issue must be withheld 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 170159

Enc: Submitted documents

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(w/o enclosures)