



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 7, 2003

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

OR2003-0844

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# 176169.

The Texas Department of Criminal Justice (the "department") received a request for "a copy of the information file on IF.SC.0787.O2.P1." You claim that the submitted 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.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You state that the department received the present request for information on November 13, 2002. The fifteenth business day after the date the department received the request was December 6, 2002. This office received copies of the requested information on December 9, 2002. Whether a submission is timely is determined by section 552.308 of the Government Code, which provides:

- (a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class *United States mail* properly addressed with postage prepaid and:

(1) it bears a post office cancellation mark indicating a time within that period; or

(2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within that period.

(b) When this subchapter requires an agency of this state to submit or otherwise give to the attorney general within a specified period a request, notice, or other writing, the requirement is met in a timely fashion if:

(1) the request, notice, or other writing is sent to the attorney general by *interagency mail*; and

(2) the agency provides evidence sufficient to establish that the request, notice, or other writing was deposited in the interagency mail within that period.

Gov't Code § 552.308 (emphasis added).

The department deposited copies of the requested information with UPS. Because the specific information requested was not received by this office or deposited in first class United States mail or interagency mail by its due date, December 6, 2002, the department did not meet the elements of timeliness established by section 552.308. Accordingly, the specific information requested was not submitted within the fifteen-day deadline as required by section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). You contend that the submitted information is excepted from disclosure under sections 552.117 and 552.134 of the Government Code. As sections 552.117 and 552.134 can provide compelling reasons to overcome the presumption of openness, we will address your arguments under those exceptions. *See* Open Records Decision No. 150 (1976) (confidentiality provisions and exceptions designed to protect the interests of third parties can provide compelling reasons for overcoming presumption of openness).

Section 552.134 of the Government Code relates to inmates of TDCJ and provides in relevant part:

(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 that, “[n]otwithstanding . . . 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.” Thus, the legislature explicitly made section 552.134 subject to section 552.029. We agree that section 552.134(a) is applicable to the submitted documents. We find that the exceptions in section 552.029 are not applicable. Therefore, the submitted information is excepted from required public disclosure under section 552.134.<sup>1</sup>

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

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<sup>1</sup>In light of our conclusions under section 552.134, we need not address your section 552.117 claim.

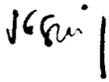
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 176169

Enc: Submitted documents

c: Ms. Laura Erwin  
P.O. Box 596  
Navasota, Texas 77868  
(w/o enclosures)