



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 13, 2003

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

OR2003-3205

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# 180955.

The Texas Department of Criminal Justice (the "department") received a request for, among other things, records pertaining to a named death row inmate's prior incarceration with the department. You contend that the information you submitted to this office is excepted from disclosure under section 552.134 of the Government Code.

Section 552.134 relates to inmates of the department. This exception 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.

(b) Subsection (a) does not apply to:

...

(2) information about an inmate sentenced to death.

The submitted information concerns an inmate who is currently confined in a facility operated by the department and who has been sentenced to death. You explain that the submitted information is about the inmate while he was incarcerated with the department for a previous non-capital offense. Consequently, the submitted material is information about a department inmate, but it is not “information about an inmate sentenced to death.” Because the submitted information was not created at a time when the inmate was sentenced to death and is not maintained in the inmate’s death row file, we find that section 552.134(a) of the Government Code is applicable and thus the information must be withheld.¹ While we note that the requestor is an attorney who represents the inmate, a person serving in this capacity has no greater right of access to information about the inmate than the general public. See Gov’t Code § 552.028(a)(2).

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).

¹This ruling does not reach the issue of whether information obtained during an inmate’s incarceration on death row or maintained in files created during an inmate’s incarceration on death row would be excepted from required public disclosure under the Public Information Act.

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 Dep't of Pub. 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CS/RWP/sdk

Ref: ID# 180955

Enc: Submitted documents

c: Mr. Bryce Benjet
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(w/o enclosures)