



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 24, 2003

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

OR2003-4334

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# 183263.

The Texas Department of Criminal Justice (the "department") received three requests for the report and audiotape related to a particular disciplinary case. While we originally assigned three identification numbers to these requests,¹ we have combined these requests into one ruling with the identification number listed above. You claim that the requested information is excepted from disclosure under section 552.134 of the Government Code. We have considered the exception you claim and have reviewed the submitted information. We have also considered written comments submitted by the individual whose records are the subject of the request for information. *See* Gov't Code § 552.304 (providing that member of public may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.134 of the Government Code 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]

¹ The other identification numbers assigned were ID#'s 183492 and 184065.

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 provides, however, 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." See Gov't Code § 552.029(8).² Thus, the legislature explicitly made section 552.134 subject to section 552.029.

The submitted information relates to an inmate of the department. Thus, section 552.134 is applicable to this information. Furthermore, we find that none of this information is subject to disclosure under section 552.029. We therefore conclude that the information is excepted from disclosure under section 552.134. We note that the individual whose information is at issue contends that the department has previously provided the information to one or more requestors from the public. However, while a governmental body may waive the right to claim permissive exceptions to disclosure under the Public Information Act by selectively disclosing information, it is prohibited from disclosing information made confidential by law. See Gov't Code § 552.007; Open Records Decision No. 400 (1983). Thus, regardless of whether the information was previously disseminated, it must be withheld under section 552.134.

² These categories are:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible release dates;
- (6) the inmate's parole date or earliest possible parole date;
- (7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; [and]
- (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.

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 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 183263

Enc. Submitted documents

cc: Mr. Charles Murray
American Enterprise Institute for Public Policy Research
1150 Seventeenth Street, Northwest
Washington, D.C. 20036
(w/o enclosures)

Mr. H.C. Eggert-Sorens
1307 Wheaton Way #103
Bremerton, Washington 98310
(w/o enclosures)

Ms. Norma Sorens
2338 South 100th East Avenue
Tulsa, Oklahoma 74129
(w/o enclosures)