



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

August 5, 2003

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

OR2003-5437

Dear Mr. Fraizer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185427.

The Texas Department of Criminal Justice (the "department") received a written request from a department employee for certain witness statements and interviews "that [were] used as evidence against [the requestor] on a disciplinary that [the requestor] received." You state that some responsive information will be released to the requestor. You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to sections 552.101, 552.117, and 552.134 of the Government Code.¹

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.

¹We note that you have also submitted to this office additional information falling outside the scope of the records request. Because this other information is not responsive to the request, we do not address here the extent to which that other information is excepted from required public disclosure.

The requested witness statements pertain to an inmate of the department. We therefore agree that the requested information is subject to section 552.134.² Accordingly, the department must withhold the requested witness statements in their entirety pursuant to section 552.134 of the Government Code.³

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).

²We note that although section 552.134 is explicitly made subject to section 552.029(8) of the Government Code, which provides for the release of, among other things, "basic information regarding . . . an incident involving the use of force," the responsive witness statements cannot be said to contain "basic information" for purposes of section 552.029(8).

³Because we resolve your request under section 552.134, we need not address the applicability of the other exception you raised.

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,

A handwritten signature in black ink, appearing to read "Kristen Bates", written in a cursive style.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/RWP/sdk

Ref: ID# 185427

Enc: Submitted documents