



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2004

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

OR2004-3298

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 199776.

The Texas Department of Criminal Justice ("TDCJ") received a request for seven categories of information pertaining to a named former TDCJ inmate. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.² We have also considered comments submitted by the requestor. See Gov't Code 552.304 (providing for submission of public comments).

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

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by [TDCJ] is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with [TDCJ].

¹ Although you initially raised section 552.108 of the Government Code, you have not submitted arguments stating how this exception applies to the submitted information. Therefore, we presume you have withdrawn any argument under this section.

² We note that the submitted information includes information that is not responsive to the instant request. This ruling does not address such information.

Section 552.029 of the Government Code states:

Notwithstanding Section 508.313 or Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with [TDCJ] is subject to required disclosure under Section 552.021:

- (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 [TDCJ] or its predecessor[.]

Gov't Code § 552.029(1)-(7). Section 552.134 is explicitly made subject to section 552.029. The seven categories of the request are for the information listed in section 552.029(1)-(7). Although you inform us that the individual whose information has been requested is no longer confined in a facility operated by or under contract with TDCJ, we conclude that section 552.029 applies because the submitted information is about an inmate.

You also assert that the requested information is confidential under section 552.101, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code 552.101. Section 552.101 encompasses confidentiality statutes such as section 508.313, which provides for confidentiality of, inter alia, information relating to a "releasee." However, because we have concluded that section 552.029 applies to the requested information and because section 552.029, by its express terms, overrides section 508.313, we find that section 508.313 does not make the requested information confidential. *See* Gov't Code §§ 552.029, 508.313(f)

(providing that section 508.313 is inapplicable to information subject to public disclosure under section 552.029). Therefore, TDCJ must release the requested information to the requestor.

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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 199776

Enc: Submitted documents

c: Mr. Ward Larkin
15327 Pebble Bend Drive
Houston, Texas 77068-1839
(w/o enclosures)