



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2005

Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
P. O. Box 13084
Austin, Texas 78711-2548

OR2005-05521

Dear Mr. West:

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# 226526.

The Texas Department of Criminal Justice's Office of the Inspector General (the "OIG") received a request for a specified internal affairs investigation. The OIG indicates that some of the submitted information will be redacted pursuant to the previous determination issued by this office in Open Records No. 2005-01067 (2005).¹ The OIG also states that some of the requested information has been released, but claims that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹Open Records Letter No. 2005-01067 (2005) serves as a previous determination for the Texas Department of Criminal Justice (the "department") that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

²Although the OIG also raises section 552.029 of the Government Code, we note that this section is not an exception to disclosure but is instead a list of eight categories of information that must be released when the information concerns an inmate who is confined in a facility operated by or under contract with the department. See Gov't Code § 552.029.

Initially, we note that the submitted information includes complaints. Article 15.04 of the Code of Criminal Procedure provides that “[t]he affidavit made before the magistrate or district or county attorney is called a ‘complaint’ if it charges the commission of an offense.” Case law indicates that a complaint can support the issuance of an arrest warrant. See *Janecka v. State*, 739 S.W.2d 813, 822-23 (Tex. Crim. App. 1987); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.—Corpus Christi 1990, pet. ref’d); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14 Dist.] 1996, pet. ref’d) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). If the marked complaints were “presented to the magistrate in support of the issuance of an arrest warrant,” then they are made public by article 15.26 and must be released. If the marked complaints were not so presented, then they are not made public by article 15.26, and we must consider whether any of the exceptions you claim protect them from disclosure.

Section 552.134(a) of the Government Code relates to inmates of the department and provides in relevant part the following:

(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, notwithstanding 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[.]” These eight categories of information include basic information regarding an alleged crime involving an inmate. *Id.* § 552.029.

The legislature explicitly made section 552.134 subject to section 552.029. On review, we find that the submitted information constitutes information relating to an inmate for purposes of section 552.134. However, these records contain information about alleged crimes involving an inmate. Thus, basic information concerning the crimes must be released. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. The remaining submitted information must be withheld under section 552.134. As our ruling is dispositive, we need not address the OIG’s remaining arguments.

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).

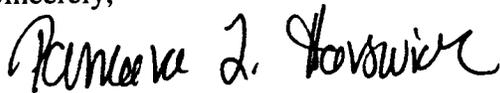
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/krl

Ref: ID# 226526

Enc. Submitted documents

c: Mr. Jovon Guzman
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(w/o enclosures)