ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2006

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

OR2006-07015

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# 252896.

The Texas Department of Criminal Justice (the "department") received a request for the following information concerning a named department employee: any disciplinary investigations, actions, or sanctions; the reason for demotion, dismissal, or resignation; and personnel evaluations. The request also seeks any reports, audits, evaluations, or investigations, made for or by the department. You state that eight case files exist that are responsive to this request. You state that six of the responsive case files were the subject of a prior ruling of this office, issued as Open Records Letter No. 2005-09394 (2005) on October 17, 2005. *See* Open Records Letter No. 2005-09394 (2005) (concluding that the requested information must be withheld under sections 552.101 and 552.134 of the Government Code). You state that three of these case files remain unchanged; therefore, you may continue to rely on our previous ruling for that information.[1] You state that the

[1] *See* Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

remaining three case files have had information added since August 2005. Additionally, you state that two new case files exist that are responsive to the present request. You state that the department has released some of the requested information, including among other things, summons, arrest warrants, and magistrate's warnings. *See* Crim. Proc. Code art. 15.26 (signed and executed arrest warrant is public information); *see also* Gov't Code § 552.022(a)(17) providing for the required public disclosure of information contained in a public court record). You seek a ruling on the remaining new information added to the three case files as well as the two new case files. You claim that this information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have reviewed the submitted information.

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

> Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] 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 the department.

Gov't Code § 552.134(a). Section 552.134 is explicitly made subject to section 552.029 of the Government Code, which provides in relevant part as follows:

> Notwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:
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> . . .
>
> (8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving an inmate.

Id. § 552.029(8). 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. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information under predecessor to section 552.108). In this instance, the submitted information pertains to investigations of the use of force against inmates, official oppression by the named employee, and allegations of assault by the employee against inmates. You state that the department will release basic information regarding these incidents pursuant to section 552.029(8). We conclude the department must withhold the remaining submitted information under section 552.134 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

In summary, the department must continue to rely on Open Records Letter No. 2005-09394 for the information that was previously ruled on. With the exception of basic information, the department must withhold the remaining submitted information under section 552.134 of the Government Code.

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); *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 Office of the Attorney General 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. 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,

Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 252896

Enc. Submitted documents

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(w/o enclosures)