



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 15, 2007.

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

OR2007-13439

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# 291916.

The Texas Department of Criminal Justice (the "department") received a request for information relating to investigations and disciplinary actions involving the requestor. You inform us that the department will release some of the requested information, with redactions pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).<sup>1</sup> You also state that social security numbers will be redacted pursuant to section 552.147 of the Government Code.<sup>2</sup> You claim that the remaining information is excepted from disclosure under section 552.134 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must

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<sup>1</sup>Open Records Letter No. 2005-01067 authorizes the department to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of its current or former employees under section 552.117(a)(3) of the Government Code, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, without the necessity of requesting a decision under the Act. *See* Open Records Decision No. 673 (2001) (previous determinations).

<sup>2</sup>Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e-1) provides as follows:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

Gov't Code § 552.301(e-1). You inform us that the department sent the requestor a copy of the written comments that were submitted to this office pursuant to section 552.301(e)(1)(A). The entire discussion of the exceptions asserted by the department is redacted from the copy. Having reviewed the copy of the comments that were sent to the requestor, we find that the department redacted information that does not disclose or contain the substance of the information requested. We therefore conclude that the department failed to comply with section 552.301(e-1) in requesting this decision.

Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ). This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because your claim under section 552.134 of the Government Code can provide a compelling reason for non-disclosure, we will consider your arguments.

Section 552.134 of the Government Code is applicable to information relating to inmates of the department. Section 552.134(a) states that

[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] 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 in part that

[n]otwithstanding . . . 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:

(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.

*Id.* § 552.029(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

We conclude that section 552.134(a) is generally applicable to the remaining information. We note, however, that the information pertains to a use of force. The department must release basic information about the use of force under section 552.029(8). The basic information that must be released includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. With the exception of the basic information that must be released under section 552.029, the department must withhold the remaining 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).

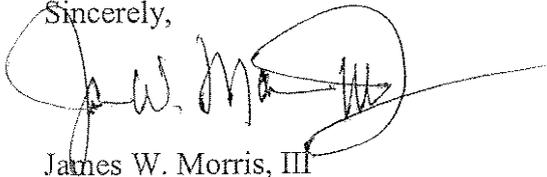
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, circular flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/eb

Ref: ID# 291916

Enc: Submitted documents

c: Mr. Walter Jameson  
107 CR 1267  
Fairfield, Texas 75840-5175  
(w/o enclosures)