



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2007

Ms. Patricia Fleming
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

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

OR2007-13576

Dear Ms. Fleming and 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# 292307.

The Texas Department of Criminal Justice (the "department") received four requests from four requestors for information relating to a specified investigation. Both the Office of the General Counsel (the "OGC") and the Office of the Inspector General (the "OIG") state that some of the requested information either has been or will be released, except for information that the department is authorized to withhold under sections 552.117 and 552.147 of the Government Code.¹ Both the OGC and the OIG have submitted information that the department seeks to withhold under sections 552.101, 552.108, 552.1175, and 552.134 of the

¹See Open Records Letter No. 2005-01067 (2005) (authorizing department to withhold information relating to its current or former employees under Gov't Code § 552.117(a)(3) without necessity of requesting attorney general decision); Gov't Code § 552.147(b) (authorizing governmental body to redact living person's social security number from public release under Gov't Code § 552.147 without necessity of requesting attorney general decision under Act).

Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D).

The OGC concedes that it did not comply with the deadlines prescribed by subsections 552.301(b) and 552.301(e) in requesting this decision. Moreover, the OGC has provided dates of receipt of these requests that do not coincide with the dates of receipt provided by the OIG.² Under these circumstances, we are unable to conclude that either the OGC or the OIG complied with subsections 552.301(b) and 552.301(e) in requesting this decision. We also note that the OIG failed to comply with section 552.301(e-1), which 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.

Id. § 552.301(e-1). The OIG states that it sent the requestors copies of the written comments that were submitted to this office pursuant to section 552.301(e)(1)(A). The entire discussions of the exceptions that the OIG claims have been redacted from the copies. Because the OIG has redacted information from the copies that does not disclose or contain the substance of the information requested, the OIG has failed to comply with section 552.301(e-1).

²The OGC states that the requests by Mr. Carl Burns, Mr. Curtis Coble, and Mr. William Smith were received on July 30, 2007 and that Mr. Hubert Herring's request was received on August 1. The OIG states that Mr. Burns's, Mr. Coble's, and Mr. Smith's requests were received on August 1 and Mr. Herring's request on August 7.

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). Section 552.108 of the Government Code, which the OIG raises, is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The OIG's claim under section 552.108 does not provide a compelling reason for non-disclosure under section 552.302. In failing to comply with section 552.301, the OIG has waived section 552.108, and the department may not withhold any of the submitted information under that exception. However, the applicability of sections 552.101, 552.1175, and 552.134 of the Government Code can provide compelling reasons for non-disclosure. Therefore, we will consider the OGC's and the OIG's claims under sections 552.101, 552.1175, and 552.134.

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, however, 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 submitted information. We note, however, that the information at issue 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 submitted information under 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, 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).

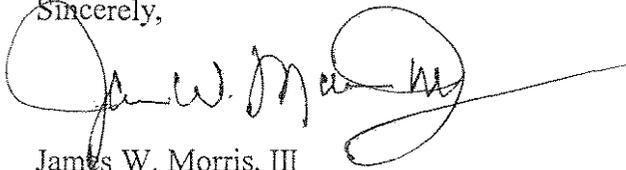
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

³As we are able to make these determinations, we need not address the OIG's other arguments against disclosure.

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 long horizontal line extending to the right.

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

JWM/ma

Ref: ID# 292307

Enc: Submitted documents

c: Mr. Carl L. Burns
1514 FM 1950
Chilton, Texas 76632
(w/o enclosures)

Mr. Curtis Coble
1201 South Reagan
Hamilton, Texas 76531
(w/o enclosures)

Mr. Hubert Herring
P.O. Box 261
Florence, Texas 76527
(w/o enclosures)

Mr. William V. Smith
250 County Road 207
Gatesville, Texas 76528
(w/o enclosures)