



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 19, 2008

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

OR2008-02232

Dear Ms. Fleming:

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 #302583.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the Aryan Circle prison gang from 1985 to the present. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

We first note that the submitted information contains a custodial death report, which we have marked. In Open Records Decision No. 521 (1989), this office addressed the confidentiality of custodial death reports and their attachments. Specifically, this office concluded that under article 49.18(b) of the Code of Criminal Procedure, in conjunction with a directive issued by the Office of the Attorney General, Part I of a custodial death report filed with this office is public information, but Parts II through V of the report, including any attachments,

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

are confidential. *See* ORD 521 at 4-5 (1989); *see also* Code Crim. Proc. art. 49.18(b) (attorney general shall make report, with exception of any portion of report that attorney general determines is privileged, available to any interested person). Article 49.18 requires that a custodial death report be filed "with the attorney general no later than the 30th day after the date on which the person in custody or the incarcerated person died." Code Crim. Proc. art. 49.18(b). More than thirty days passed between the death of the individual and the date when the department received this request. Thus, the department must release the entirety of Part I of the submitted custodial death report as information made public by statute. *See generally* Open Records Decision No. 525 (1989) (exceptions found in statutory predecessor to Act do not apply to information that is made public by other statutes). Parts II through V of the report are confidential and must not be released.

Section 552.134(a) 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 552.134 is explicitly made subject to section 552.029, which provides in relevant part the following:

Notwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

(1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

...

(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(1), (8). On review, we agree that the remaining records constitute information about inmates for purposes of section 552.134. Most of this information must be withheld on this basis.² However, some of the records contain information subject to section 552.029(1), while some records concern incidents involving the use of force, the deaths of inmates, and alleged crimes involving inmates. These types of information are not excepted from disclosure under section 552.134. *Id.* For purposes of section 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.

We understand you to argue that information that would generally be released under section 552.029 is excepted from release in this instance under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

This office has on numerous occasions concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (holding that predecessor to section 552.108 excepts detailed guidelines regarding police department’s use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that predecessor to section 552.108 excepts sketch showing security measures for execution). You inform us that release of the portions of the requested information that reveal Security Threat Group (“STG”) information would interfere with law enforcement by impairing the department’s ability to monitor and manage certain prison gangs. You state that release of this information “could compromise the security and safety of certain prison units in that reprisals might be directed against the named inmates by rival gang members.” You argue further that “[r]eprisals might even be directed against the known gang members identified in [the submitted information] . . . because they allowed the prison officials to get hold of the information.” Based on your arguments and our review of the submitted information, we agree that the release of STG information would interfere with law enforcement. Accordingly, the department may withhold STG information from disclosure under section 552.108(b)(1) of the Government Code.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

In summary, the department must release Part I of the submitted Custodial Death Report pursuant to article 49.18(b) of the Code of Criminal Procedure. Other than information subject to section 552.029 of the Government Code, the department must withhold the remaining information pursuant to section 552.134 of the Government Code. In releasing the information subject to section 552.029, the department may withhold STG information under section 552.108(b)(1) 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

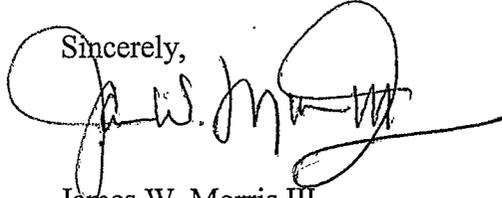
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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 'J.W. Morris III', written over a large, stylized circular flourish.

James W. Morris III
Assistant Attorney General
Open Records Division

JWM/eeg

Ref: ID# 302583

Enc. Submitted documents

c: Mr. Mark Pitcavage, Ph.D.
Director of Investigative Research
Anti-Defamation League
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(w/o enclosures)