



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2008

Mr. John C. West
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Office of the Inspector General
Texas Department of Criminal Justice
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Mr. Philip A. DeFriend
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2008-11617

Dear Mr. West and Mr. DeFriend:

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# 319673.

The Texas Department of Criminal Justice (the "department") received a request for "any and all information gathered about [the requestor] by [the department] or any other Texas State Agency." The department and the department's Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate documents that each seeks to withhold from disclosure. The OIG states that it is releasing some of the requested information to the requestor with redactions pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).¹ The OIG also states that it

¹Open Records Letter No. 2005-01067 (2005) serves as a previous determination 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.

is withholding social security numbers under section 552.147 of the Government Code.² The department claims that the information it has submitted is excepted from disclosure under 552.107 and 552.134 of the Government Code. The OIG claims that the remaining information it has submitted is excepted from disclosure under sections 552.108 and 552.134 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Section 552.134(a) relates to inmates of the department and provides the following:

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.

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:

(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).

We conclude that section 552.134(a) is generally applicable to the information submitted by the department and to most of the information submitted by the OIG. We note, however, that some of the information submitted by the department relates to incidents involving the use of force against an inmate. Thus, basic information about these incidents must be released under 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. The department must withhold the remaining information pursuant to section 552.134.³ Most of the information submitted by the OIG consists of information about inmates. Therefore, the OIG must

²We note that section 552.147(b) of the Government Code 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. Gov't Code § 552.147(b).

³As our ruling is dispositive, we do not address the department's remaining argument.

withhold this information, which we have marked, under section 552.134 of the Government Code. However, the remaining information does not consist of information about an inmate; therefore the OIG may not withhold any of the remaining information under section 552.134.⁴ As the OIG raises no additional exception for the remaining information, it must be released to the requestor.

In summary, with the exception of basic information regarding the incidents involving the use of force against an inmate, the department must withhold the information it submitted. The OIG must withhold the information we have marked under section 552.134. The OIG must release the remaining information to the requestor.

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). If the governmental body does not file suit over 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).

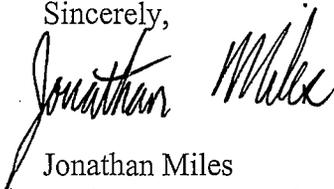
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

⁴As our ruling is dispositive for this information, we need not consider the OIG's remaining argument 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 that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 319673

Enc. Submitted documents

c: Mr. Dale R. Jonasson
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(w/o enclosures)