



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2009

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

OR2009-11330

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# 351975.

The Texas Department of Criminal Justice (the "department") received a request for all incident reports, statements, or depositions regarding specified allegations made against four named former department employees. You state the department has provided or will provide some of the requested information to the requestor. You claim the submitted statements are excepted from disclosure under section 552.134 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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

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

[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). The submitted information consists of former correction officers' statements regarding their alleged smuggling of contraband to inmates. These statements include inmate-identifying information, which is generally excepted from disclosure under section 552.134. We note, however, the statements pertain to alleged crimes involving inmates. Basic information regarding an alleged crime involving an inmate is subject to required disclosure under section 552.029(8) of the Government Code. Basic information includes, among other things, names of inmates directly involved in the incident. Therefore, the inmates' identifying information in the submitted statements is subject to release under section 552.029(8) and may not be withheld under section 552.134. Furthermore, the remaining information in the statements pertains to alleged misconduct by former correction officers. This disciplinary information does not constitute information about an inmate for purposes of section 552.134, and may not be withheld on that basis. Consequently, no part of the submitted statements may be withheld under section 552.134 of the Government Code.

We note one of the submitted statements includes the personal information of the former correction officer who wrote the statement. In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold the personal information of a current or former employee of the department under section 552.117(a)(3) of the Government Code without the necessity of again requesting an attorney general decision with regard to the applicability of this exception. *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under section 552.301(a)). Therefore, the department must withhold the personal information of the former correction officer we have marked in accordance with Open Records Letter No. 2005-01067. As you have claimed no other exceptions to disclosure for the remaining information, it must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 351975

Enc. Submitted documents

c: Requestor
(w/o enclosures)