



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2009

Mr. James Mu
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-14504

Dear Mr. Mu:

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# 358239.

The Texas Department of Criminal Justice (the "department") received a request for all information pertaining to a named inmate. You state the department has provided or will provide some of the requested information to the requestor. You claim the submitted inmate records are excepted from disclosure under sections 552.101, 552.1325, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(e)(1)(D) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request for information a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code § 552.301(e)*. Although you submitted most of the responsive information by the appropriate deadline, you did not submit the additional inmate records until after the fifteen-business-day deadline. Thus, we find the department failed to comply with the requirements of section 552.301 with respect to the additional inmate records.

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exceptions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). You claim the additional inmate records are excepted under section 552.134 of the Government Code. Because section 552.134 can provide a compelling reason to withhold information, we will consider the applicability of your claim under this section for the submitted additional inmate records. Furthermore, we will consider the applicability of your claims under sections 552.101, 552.1325, and 552.134 to the timely submitted inmate records.

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

(a) Except as provided by Subsection (b) or by Section 552.029, 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.

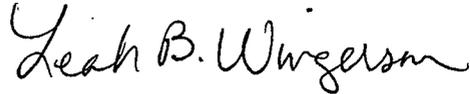
Gov't Code § 552.134(a). Upon review, we agree all of the submitted information consists of records pertaining to an individual confined as an inmate in a facility operated by the department and is, therefore, subject to section 552.134. We find the exceptions in section 552.029 are not applicable in this instance. Therefore, the department must withhold the submitted information under section 552.134(a) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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, toll free, at (888) 672-6787.

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# 358239

Enc. Submitted documents

c: Requestor
(w/o enclosures)