



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2013

Mr. John C. West
OIG General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
4616 Howard Lane, Suite 250
Austin, Texas 78728

OR2013-05037

Dear 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# 482991 (OIG Open Records No. 2013-00020).

The Texas Department of Criminal Justice (the "department") received a request for all records regarding a named inmate. You inform us the department has destroyed some of the requested information in accordance with the department's records retention schedule.¹ You state you will redact certain information subject to sections 552.117 and 552.147 of the Government Code pursuant to Open Records Letter No. 2005-01067 (2005)² and

¹The Act does not require a governmental body to release information that did not exist when it received a request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Open Records Letter No. 2005-01067 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.

section 552.147(b) of the Government Code, respectively.³ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.134 of the Government Code relates to inmates and former 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 552.029 of the Government Code provides, however:

Notwithstanding 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 records pertain to an inmate confined in a facility operated by the department. Thus, we agree section 552.134 is applicable to these records. However, portions of the records concern alleged crimes involving the inmate. Consequently, the department must release basic information regarding these alleged crimes pursuant to 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. Therefore, with the exception of basic information regarding the alleged crimes, the department must withhold the submitted information under section 552.134 of the Government Code.⁴

³Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

⁴As 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, appearing to read "Kathryn R. Mattingly".

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 482991

Enc. Submitted documents

c: Requestor
(w/o enclosures)