



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2016

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

OR2016-11419

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# 610790.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to "Heat-Related Illness Reporting Forms" during a specified time period. The department states it does not have information responsive to a portion of the request.¹ The department claims it is either not required to respond to the request for information pursuant to section 552.028 of the Government Code, or the requested information is excepted from disclosure under section 552.134 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Section 552.028 of the Government Code provides, in relevant part, the following:

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). The department explains the requestor is (1) the director of the University of Texas Law School's Human Rights Clinic, which published a report on heat-related complaints that quotes a particular inmate and (2) a designated expert witness for the plaintiffs, who include that inmate, in a pending lawsuit against the department that pertains to heat risks for Texas inmates. Thus, the department asserts the requestor is an agent of the inmate at issue for purposes of section 552.028(a)(2). However, upon review we find the department has not established the requestor is requesting information on behalf of an inmate. Accordingly, section 552.028 is not applicable to the requestor, and we will address the department's argument against disclosure of the submitted information under the Act.

The department asserts the submitted information is excepted from release under section 552.134 of the Government Code. 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 [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.

Id. § 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 [department] is subject to required disclosure under Section 552.021:

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

(2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of a substance abuse treatment[.]

Id. § 552.029(1), (2). Thus, the legislature explicitly made section 552.134 subject to section 552.029. The department contends the submitted information falls within the scope of section 552.134. We agree the submitted information pertains to an inmate confined in a facility operated by the department and is subject to section 552.134 of the Government Code. We note some of the submitted information consists of the inmate's name, identification number, and nature of an injury subject to section 552.029(1), and the inmate's assigned unit subject to section 552.029(2). The department must release this information pursuant to section 552.029. *See id.* The department must withhold the remaining information under section 552.134 of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 610790

Enc. Submitted documents

c: Requestor
(w/o enclosures)