



December 7, 2001

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2001-5732

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155835.

The Texas Department of Criminal Justice (the "department") received two requests for copies of documents pertaining to a specified inmate. You claim that the requested information is excepted from disclosure pursuant to sections 552.103 and 552.134 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that section 552.301 of the Government Code provides certain procedural requirements that must be complied with when a governmental body requests a decision from our office regarding requested information that it wishes to withhold from disclosure. Section 552.301 provides in pertinent part:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a),(b). We note that the department received the first request for information on August 7, 2001. However, the department did not request a ruling from our office with respect to the information that is responsive to that request until October 3, 2001. Therefore, the department did not seek a decision from this office concerning that requested information within the statutory ten business day deadline. *See* Gov't Code § 552.301. Accordingly, the department failed to comply with the procedural requirements of section 552.301 of the Government Code. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). In order to overcome a presumption that requested information is public, a governmental body must demonstrate a compelling reason why the information should not be disclosed. *See* Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381. Normally, a compelling reason is shown if the governmental body demonstrates that the requested information is confidential by law or that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You claim that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. However, section 552.103 is a discretionary exception under the Public Information Act that does not provide a compelling reason sufficient to overcome the presumption that the requested information is public.<sup>1</sup> However, since you claim that all of the responsive information is excepted from disclosure under section 552.134 of the Government Code, we will address your claims under that exception.

Section 552.134 provides in pertinent 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 the requirements of Section 552.021 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). The submitted information concerns an inmate who is confined in a facility operated by the department. However, we note that section 552.134(a) is explicitly made subject to section 552.029 of the Government Code. Basic information

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<sup>1</sup>Discretionary exceptions are intended to only protect the interests of the governmental body as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 473 (1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

regarding an alleged crime involving an inmate must be released in accordance with section 552.029(8) of the Government Code. *See* Gov't Code §§ 552.134(a), 552.029(8). This office has determined that basic information under section 552.029(8) includes the time and place of the incident, names of inmates and department officials directly involved in the incident, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding any criminal charges or disciplinary actions filed as a result of the incident. We note that the submitted information pertains to an alleged crime involving inmates. Therefore, except for the basic information that must be released under section 552.029(8), the department must withhold the submitted information from disclosure pursuant to section 552.134 of the Government Code.

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Texas Building and Procurement Commission 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/sdk

Ref: ID# 155835

Enc. Submitted documents

c: Mr. David E. Martinez  
Attorney at Law  
1114 Southwest Military Drive, Suite 102  
San Antonio, Texas 78221  
(w/o enclosures)