OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 3, 2002

Mr. James M. Frazier, III
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2002-6877

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173000.

The Texas Department of Criminal Justice (the "department") received a request for all documents "under the file number SC.15.9056.01 HT, and for Case # 01-1211." You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We first note that Case # 01-1211 was the subject of Open Records Letter No. 2002-3501 (2002). In that ruling, this office found that most of the information was excepted from disclosure under section 552.134 of the Government Code. As there has been no change in the facts, law, or circumstances relating to the information, the department may rely on our decision in Open Records Letter No. 2002-3501 (2002) as a previous determination in withholding the information in Case # 01-1211 that this office ruled was excepted from disclosure. *See* Open Records Decision No. 673 (2001). You state that you are releasing basic information related to Case # 01-1211 in accordance with the previous determination.

We now turn to your arguments in relation to file number SC.15.9056.01.HT. Section 552.134 of the Government Code relates to information about an inmate of the department and 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 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). Section 552.029 provides, however, that "[n]otwithstanding ... Section 552.134," eight specified categories of "information about an inmate who is confined in a facility operated by or under a contract with [the department are] subject to required disclosure." *See* Gov't Code § 552.029(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

The submitted information in file number SC.15.9056.01.HT concerns an inmate confined in a facility operated by the department. We conclude that section 552.134 is applicable to this information. Furthermore, we find that none of this information is subject to disclosure under section 552.029. We therefore conclude that the information in file number SC.15.9056.01.HT is excepted from disclosure under section 552.134 and must be withheld. As section 552.134 is dispositive, we do not address your remaining claims.

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.

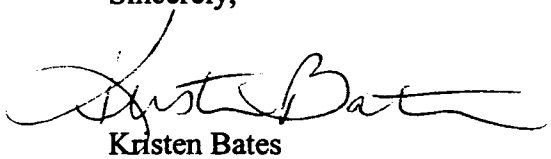
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 173000

Enc. Submitted documents

c: Mr. Alex Simpson
1245 Scotwood Drive
Wasilla, Arkansas 99654
(w/o enclosures)