OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 2, 2003

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

OR2003-0038

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# 174443.

The Texas Department of Criminal Justice ("TDCJ") received a request for information regarding a specific investigation involving the requestor, who is a TDCJ officer. You claim that the requested information is excepted from disclosure under section 552.134 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that TDCJ has not sought an open records decision from this office within ten business days, as prescribed by section 552.301 of the Government Code. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (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). To overcome this presumption, the governmental body must show a compelling interest to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). As the presumption of openness can be overcome by a showing that information is confidential by law, we will consider your arguments under section 552.134.

Section 552.134 of the Government Code relates to inmates of TDCJ 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 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). Section 552.029 of the Government Code provides 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." Thus, the legislature explicitly made section 552.134 subject to section 552.029.

We agree that section 552.134(a) is applicable to most of the submitted information and find that none of this information is subject to disclosure under section 552.029. This information is excepted from required public disclosure under section 552.134. However, we note that the documents that we have marked do not, on their face, reveal any information relating to a TDCJ inmate. Therefore, they may not be withheld under section 552.134 and must be released to the requestor.

We note that some of the documents that you must release contain the officer's social security number. Ordinarily, this information is excepted from disclosure by section 552.117(3) of the Government Code. However, in this instance, the social security number belongs to the requestor. Pursuant to section 552.023 of the Government Code, an individual who is the subject of information has a special right of access to the information even though it would otherwise be protected from public disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. Thus, TDCJ may not withhold the requestor's social security number in this instance.[1]

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

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[1] We note, however, that should TDCJ receive another request for information relating to this individual from a person who would not have a special right of access to it, TDCJ should resubmit this same information and request another ruling.

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,

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 174443

Enc: Submitted documents

c: Ms. Kathy Scott
3333 Thornwood Way
Huntsville, Texas 77340
(w/o enclosures)