



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 22, 2003

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

OR2003-2686

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# 179767.

The Texas Department of Criminal Justice (the "department") received a request for six categories of information related to a death row inmate's prior incarceration for aggravated assault.<sup>1</sup> 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 have reviewed the submitted information.

As an initial matter, we note that the requestor references a previous request she made for the same information at issue here, and indicates that she made the request by letter dated December 18, 2002. Your office acknowledges receipt of this request in a letter to the requestor, but appears to have withheld information responsive to that request without seeking a decision from this office. Thus, we address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than

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<sup>1</sup> We note in relation to the requestor's request that the department provide her with a list and description of any documents not releasable, that the Public Information Act does not require a governmental body to answer factual questions, perform legal research, or create new information in responding to a request. See Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989).

the tenth business day after the date of receiving a written request. Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Because the department did not request a decision from this office within ten business days in relation to the previous request, and did not submit the information required to be submitted within fifteen business days, it failed to comply with section 552.301.

Pursuant to section 552.302, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). The application of section 552.134 of the Government Code provides a compelling reason for overcoming the presumption of openness. *See* Open Records Decision No. 150 (1977). Thus, we address your claim under this exception.

Section 552.134(a) states 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.

(b) Subsection (a) does not apply to:

...

(2) information about an inmate sentenced to death.

Gov't Code § 552.134(a). The submitted information concerns an inmate who is confined in a facility operated by the department. While the inmate whose information is at issue has now been sentenced to death, you explain that the submitted records concern the inmate's prior incarceration under department #850261. You also state that the documents at issue

“are not part of the death row file and are not filed therein.” Thus, the submitted information is information about a department inmate, but it is not “information about an inmate sentenced to death.” Therefore, because the information at issue was not created at a time when the inmate was sentenced to death, we agree that section 552.134(a) is applicable to the information.

However, we note that section 552.134(a) is explicitly made subject to section 552.029 of the Government Code. Basic information regarding the death of an inmate in custody, an incident involving the use of force, or 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 an incident, names of inmates and department officials directly involved in an 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. Some of the submitted information, which we have marked, pertains to alleged crimes involving the inmate regarding an assault and possession of a weapon with intent to cause injury. Therefore, except for basic information regarding these alleged crimes that must be released to the requestor under section 552.029(8), the department must withhold the submitted information pursuant to section 552.134 of the Government Code. While we note that the requestor is an attorney who is representing the inmate, an attorney representing an inmate has no greater right to information about the inmate than the general public. *See* Gov’t Code § 552.028(a)(2).

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 Dep't of Pub. 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/lmt

Ref: ID# 179767

Enc. Submitted documents

c: Ms. Naomi Terr  
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(w/o enclosures)