



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 4, 2003

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

OR2003-3821

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# 182190.

The Texas Department of Criminal Justice (the "department") received a written request for all records pertaining to any investigations regarding the requestor. You contend that the requested information is excepted from required disclosure pursuant to sections 552.108, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.134 of the Government Code 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 [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.

We agree that most of the submitted documents are "about an inmate" for purposes of section 552.134. However, section 552.029 of the Government Code provides:

Notwithstanding Section 508.313 or [552.134], the following information about an inmate who is confined in a facility operated by or under a contract

with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

....

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8) (emphasis added). Thus, the legislature explicitly made section 552.134 subject to section 552.029. Pursuant to section 552.029(8), "basic information" regarding an alleged crime involving an inmate is subject to required disclosure. Because the information at issue pertains to an allegation of bribery "involving the inmate," we conclude that section 552.029(8) is applicable in this instance. Consequently, the department must release basic information regarding the allegation. The basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. Additionally, we have identified eight separate documents that are not "about an inmate" and thus are not excepted from public disclosure pursuant to section 552.134; consequently, those eight documents must also be released to the requestor. We have marked the submitted documents accordingly.¹

In summary, the department must withhold the records we have marked under section 552.134 of the Government Code, but must release the "basic information" in those documents pursuant to section 552.029 as discussed above. The department must release the remaining submitted records to the requestor.

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

¹Because we resolve your request under section 552.134, we do not reach your other claimed exceptions to disclosure.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/RWP/seg

Ref: ID# 182190

Enc: Submitted documents

c: Ms. Mary Ann Heffernan
114 Jasmine Street
Baytown, Texas 77520
(w/o enclosures)