



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 7, 2003

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

OR2003-4669

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# 183831.

The Texas Department of Criminal Justice (the "department") received a written request for "the investigation into the death of the above referenced inmate." You inform us that the information responsive to this request is found in two investigations, one conducted by the Polunsky Unit (the "Polunsky investigation") and the other a criminal investigation conducted by the Office of Inspector General (the "OIG investigation").¹ You indicate that some of the responsive information will be released to the requestor. You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to sections 552.101, 552.103, 552.108, and 552.117 of the Government Code.

We note at the outset that the requested investigation records are specifically made public under section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part as follows:

¹Although you have also submitted to this office a legal opinion from the department's Office of the General Counsel, this information does not consist of an "investigation" of the death of the named inmate. Consequently, the submitted legal opinion is not responsive to the request and we do not address here the extent to which the legal opinion is subject to public disclosure under the Public Information Act.

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Because the requested records pertain to completed investigations, they are expressly made public under section 552.022. Therefore, the department may withhold those records only if they are made confidential under other law or are excepted from public disclosure pursuant to section 552.108. Although you argue that the requested records are excepted under section 552.103 of the Government Code, this provision is a discretionary exception and therefore is not "other law" for purposes of section 552.022. *See, e.g.*, Open Records Decision Nos. 665 at 2 n.5 (2000) (governmental body may waive section 552.103). On the other hand, because you contend that the investigation records are excepted from public disclosure pursuant to sections 552.101, 552.108, and 552.134 of the Government Code, we will consider the applicability of these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information deemed confidential by statute. In this regard, we note that some of the documents you submitted to this office consist of medical records that are made confidential under the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001 *et. seq.* Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). The medical records that you have identified must be released only as provided under the MPA. Open Records Decision No. 598 (1991).

You seek to withhold the records from the OIG investigation pursuant to the "law-enforcement" exception, section 552.108 of the Government Code. Section 552.108(a)(2)

excepts from required public disclosure “[i]nformation held by a law enforcement agency . . . that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” Based on your representation that the OIG investigation has concluded in a result other than a criminal conviction or deferred adjudication, we conclude that the department may withhold most of the information contained in the OIG investigation report pursuant to section 552.108(a)(2) of the Government Code.

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The department therefore must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 (1976).

Finally, you contend that the records pertaining to the Polunsky investigation are excepted from public disclosure pursuant to section 552.134 of the Government Code, which 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 the records pertaining to the Polunsky investigation 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 the death of an inmate is subject to required disclosure. We therefore

conclude that section 552.029(8) is applicable in this instance. Consequently, the department must release basic information regarding the inmate's death. 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. The remaining information from the Polunsky investigation must be withheld pursuant to section 552.134.²

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).

²Because we resolve your request under section 552.134, we do not reach your other claimed exceptions to disclosure.

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/sdk

Ref: ID# 183831

Enc: Submitted documents

c: Ms. Angie Smith
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(w/o enclosures)