



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2004

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

OR2004-2991

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# 199347.

The Texas Department of Criminal Justice (the "department") received two requests from the same requestor for prison records concerning a death row inmate. You state that you have released some of the information. You claim that the remaining 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 reviewed the representative sample of records.¹ We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

First, you assert that some of the requested information is excepted from disclosure under section 552.134 of the Government Code. Section 552.134 relates to information about inmates 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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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.

The requested information concerns an inmate who is currently confined in a facility operated by the department and who has been sentenced to death. You explain, however, that some of the information concerns the inmate while he was incarcerated with the department for previous non-capital offenses. Consequently, this information is about a department inmate, but it is not "information about an inmate sentenced to death." Because some of the records were not created at a time when the inmate was sentenced to death and are not maintained in the inmate's death row file, we find that section 552.134(a) of the Government Code is applicable to some of the requested information.

The requestor asserts, however, that section 552.023 of the Government Code provides her, as an authorized representative of the inmate at issue, a right of access to the requested information. Section 552.023 gives a person or a person's authorized representative a "special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." However, section 552.134 of the Government Code does not protect only the inmate's privacy interest. Therefore, section 552.023 does not provide the requestor a special right of access to the requested information.

We note, however, that the requestor is entitled to a portion of the requested information that is subject to section 552.134(a) of the Government Code. Section 552.134 is explicitly made subject to section 552.029. Pursuant to section 552.029(8), basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to required disclosure. A portion of the information subject to section 552.134(a) pertains to an incident involving the use of force and an alleged crime committed by an inmate. While the department must generally withhold this information under section 552.134, it must release basic information regarding these incidents pursuant to section 552.029(8). Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Accordingly, with the exception of basic information, the department must withhold some of the requested information under section 552.134(a). As our ruling on this issue is dispositive, we need not address your additional arguments against disclosure for this information.

Next, you seek to withhold some of the information contained in the inmate's death row file. You acknowledge, and we agree, that the provisions of section 552.134 do not apply to information about an inmate that is sentenced to death. Therefore, you have released most of the information in the death row file to the requestor. However, you wish to withhold the criminal history record information ("CHRI") under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, you must withhold the CHRI from the requestor. We note, however, that an individual can obtain his own CHRI from DPS. Gov't Code § 411.083(b)(3).

In summary, with the exception of basic information, you must withhold the information that is subject to section 552.134(a). You must withhold the CHRI under section 552.101 in conjunction with section 411.083(a).

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,



Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 199347

Enc. Submitted documents and videotape

c: Ms. Eleni Antonopoulos
Louisiana Crisis Assistance Center
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(w/o enclosures)