



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2004

Mr. Bruce Sadler  
Assistant District Attorney  
47<sup>th</sup> Judicial District  
501 South Filmore, Suite 5A  
Amarillo, Texas 79101-2449

OR2004-3399

Dear Mr. Sadler:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 200069.

The District Attorney for the 47<sup>th</sup> Judicial District (the "district attorney") received a request for photographs and videotapes relating to the investigation of the death an inmate in the custody of the Texas Department of Criminal Justice (the "TDCJ"). You state that you do not possess the requested videotapes. You claim that the requested photographs, which you have provided in Exhibits B through E, are excepted from disclosure under section 552.134 of the Government Code. We have considered the exception you claim and reviewed the submitted representative samples of information.<sup>1</sup>

Initially, we note your statement that the requested videotapes are not in your possession. You inform us that the tapes are in the possession of the District Clerk of Potter County, and we assume you have not retained a right of access to them. See Gov't Code § 552.002 (definition of public information includes information collected, assembled, or maintained in connection with transaction of official business for governmental body and governmental

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<sup>1</sup>We assume that the 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.

body owns information or has right of access to it). You have no obligation under Act to create or obtain information not in your possession at the time of the request. *See* Open Records Nos. 605 at 2 (1992), 572 at 1 (1990), 558 at 1 (1990), 362 at 2 (1983). Therefore, you are not required to respond to the part of the request seeking the videotapes.

We also note that the submitted information includes autopsy photographs of the inmate. Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Pursuant to section 11 of article 49.25, the autopsy photographs are subject to disclosure under the Act, but can be withheld from public disclosure if one of the Act's exceptions applies to the them. Therefore, we will consider your claim that the autopsy photographs and other requested photographs are excepted from disclosure under section 552.134 of the Government Code.

Section 552.134 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 an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.134 is explicitly made subject to section 552.029 of the Government Code. *See* Gov't Code §552.134(a). Section 552.029 provides:

Notwithstanding . . . Section 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:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible release dates;
- (6) the inmate's parole date or earliest possible parole date;
- (7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or
- (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.

You assert that the requested photographs are excepted from disclosure pursuant to section 552.134. The requested photographs constitute information about an inmate who was confined by the TDCJ, and none of the categories of information made public under section 552.029 is applicable to the photographs.

We note that section 552.134 applies only to "information obtained or maintained by" the TDCJ. *See* Gov't Code § 552.134(a). Section 552.134(d) states that the release of information subject to section 552.134(a) to an eligible entity, as defined by section 508.313(d) of the Government Code, for a purpose related to law enforcement or prosecution is not considered a release of information to the public and does not waive the protection of section 552.134 or other law.<sup>2</sup> Additionally, we have previously held that the TDCJ has the discretion to transfer to another governmental body information subject to the statutory predecessor to section 552.134, and that the transferred information remains confidential in the hands of the receiving governmental body. *See* Open Records Decision

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<sup>2</sup>Section 508.313(d) of the Government Code defines "eligible entity" to include a government agency, including the office of a prosecuting attorney.

No. 667 (2000) (TDCJ has discretion to release inmate's social security number made confidential by statutory predecessor to section 552.134 to voter registrar for purpose of maintaining accurate voter registration lists and transferred social security number remains confidential in possession of the voter registrar).

Based on representations made in your letter to this office, we understand that the district attorney obtained the requested photographs in connection with its prosecution of the inmate's murder. However, we are unable to determine whether the district attorney, an "eligible entity" for purposes of section 552.134(d), obtained the photographs from the TDCJ. If the district attorney obtained the photographs from the TDCJ, they are excepted from disclosure under section 552.134. To the extent the district attorney did not obtain the photographs from the TDCJ, section 552.134 does not apply and the photographs must be released 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 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,



Karen Hattaway  
Assistant Attorney General  
Open Records Division

KEH/JLC/seg

Ref: ID# 200069

Enc. Submitted documents

c: Mr. George Colbert  
2114 Carrie Avenue  
Shreveport, Louisiana 71103  
(w/o enclosures)