ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2004

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

OR2004-9285

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# 212504.

The Texas Department of Criminal Justice (the "department") received a request for seven categories of information. You state that you have provided the requestor with most of the requested information. Regarding the request for the number of "officers [who] have been reassigned, fired, criminally prosecuted, or otherwise dealt with in the past year," you state that you have no responsive information with respect to the number of officer prosecutions.[1] As for the number of officers reassigned or fired, you state that "[t]o find that information, the HR Department would have to individually check over 40,000 personnel files which would be physically impossible to accomplish." We note that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision Nos. 561 at 8-9 (1990), 87 (1975). Moreover, the difficulty of complying with the Act does not determine the availability of information. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (1976), *cert. denied*, 430 U.S. 931 (1977); *see also* Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988). Thus, to the extent such information exists, the department must release it. *See* Gov't Code §§ 552.301, .302. You claim that the remaining submitted 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 submitted information.

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[1] We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

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 [department] 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.

Gov't Code § 552.134(a). Section 552.029 of the Government Code states:

> Notwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] 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). We note that section 552.134 is explicitly made subject to section 552.029. Under section 552.029, 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. The submitted information pertains to an incident involving the use of force against a department inmate. You state that the department has released basic information regarding this incident pursuant to section 552.029(8).[2] The remaining submitted information constitutes information about an inmate confined in a facility operated by the department. We therefore conclude that the department must withhold the remainder of the submitted information under section 552.134 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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

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[2] 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.

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).

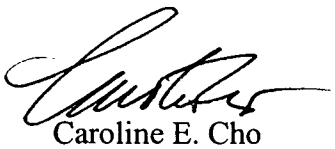
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 212504

Enc. Submitted documents

c: Mr. Thom Marshall
Houston Chronicle
801 Texas Avenue
Houston, Texas 77002
(w/o enclosures)