



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2004

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

OR2004-10162

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# 216428.

The Texas Department of Criminal Justice (the "department") received a request for information relating to the death of an inmate. You claim that the requested information may be withheld pursuant to a previous ruling from this office, and that this information is excepted from disclosure under sections 552.101, 552.108, 552.115, 552.117, and 552.134 of the Government Code. We have considered your arguments.

Initially, you assert that the information at issue is excepted from disclosure in accordance with a previous ruling from this office. In Open Records Decision No. 673 (2001), this office addressed the circumstances under which a governmental body could rely on a ruling from this office as previous determination for purposes of section 552.301 of the Government Code. In that ruling, we concluded that one situation in which a governmental body may rely on a prior ruling of this office as a previous determination arises when the following criteria are met: (1) the information at issue consists of precisely the same records or information previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; (2) the governmental body that receives the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; (3) the attorney general's prior ruling concluded that the precise information is or is not excepted from disclosure under the Act; and (4) the law, facts, and

circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

In this instance, you represent that all four of the listed criteria are met. Based on your representations and a review of our records, we conclude that Open Records Letter No. 2004-9521 (2004) functions as a previous determination in this instance; therefore, the department must comply with that ruling. *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001). As we are able to reach this conclusion, we need not address your other arguments.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 216428

c: Mr. Haakon Donnelly
Bellinger & DeWolf, L.L.P.
10,000 North Central Expressway, Suite 900
Dallas, Texas 75231