ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2004

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

OR2004-10364

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# 214368.

The Texas Department of Criminal Justice (the "department") received a request for information related to the decision of whether to grant parole to a named inmate. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, 552.1325, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information includes an affidavit for an arrest warrant. As amended by the 78th Legislature, article 15.26 of the Code of Criminal Procedure provides:

> The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Crim. Proc. Code art. 15.26. As a general rule, the exceptions to disclosure found in the Public Information Act (the "Act") do not apply to information that is made public by other

statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, if the affidavit that we have marked was presented to a magistrate in support of the issuance of an arrest warrant, then the affidavit must be released under article 15.26 of the Code of Criminal Procedure. If the affidavit was not so presented, then it must be disposed of in accordance with the rest of this ruling.

Section 552.134 relates to inmates of the department and provides in relevant part:

> (a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], 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.

Gov't Code § 552.134(a). The remaining submitted records constitute information about an inmate confined in a facility operated by the department. We find that the exceptions in section 552.029 are not applicable. Therefore, the remaining submitted information is excepted from disclosure under section 552.134 of the Government Code and must be withheld.[1]

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

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[1] As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 214368

Enc. Submitted documents

c: Mr. Russell M. Webb
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(w/o enclosures)