



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 27, 2005

Mr. John C. West
Mr. James M. Frazier III
Texas Department of Criminal Justice
P.O. Box 13084
Austin, Texas 78711

OR2005-04665

Dear Mr. West and Mr. Frazier:

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# 225033.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to disciplinary charges against the requestor. The department's Office of the Inspector General (the "OIG") indicates that some of the submitted information will be redacted pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).¹ The OIG also states that some of the requested information has been released, but claims that some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. The department asserts that the information at issue is excepted under section 552.134 of the Government Code.² We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This

¹Open Records Letter No. 2005-01067 (2005) serves as a previous determination for the department that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

²We note that the department failed to assert section 552.134 within the ten-business-day period mandated by section 552.301(a) of the Government Code. Although the department did not timely raise section 552.134, this provision can constitute a compelling reason to withhold information, and we will address the department's arguments on this issue. See Gov't Code §§ 552.301, 552.302.

section encompasses information protected by other statutes. Section 1703.306 of the Occupations Code provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306.

The submitted information contains polygraph reports of the requestor and other examinees. Pursuant to section 1703.306(a)(1), the requestor has a right of access to the polygraph report in which he is the examinee; therefore, the department must release this report, which we have marked. However, the remaining polygraph reports are confidential under section 1703.306 of the Occupations Code, and the department must withhold them under section 552.101 of the Government Code.

The department asserts that section 552.134 of the Government Code is applicable to the remaining information at issue. Section 552.134(a) relates to inmates of the department and provides in relevant part the following:

(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). Section 552.134 is explicitly made subject to section 552.029, which provides in relevant part the following:

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:

...

(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.

Id. § 552.029(8).

The submitted information, which consists of four use-of-force investigations, constitutes information about inmates for purposes of section 552.134. The records also contain information concerning the use of force and alleged crimes involving inmates. Thus, the department must release basic information concerning the use of force and crimes. 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. The department must withhold the remaining submitted information pursuant to section 552.134.

To conclude, pursuant to section 1703.306(a)(1) of the Occupations Code the department must release the marked polygraph report in which the requestor was the examinee; however, the remaining polygraph reports are confidential under section 1703.306, and the department must withhold them under section 552.101 of the Government Code. The department must release basic information concerning the use of force and crimes involving inmates, but it must withhold the remaining submitted information under section 552.134. As our ruling is dispositive, we do not address the other arguments for exception of the submitted information.

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).

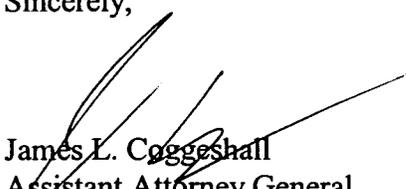
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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# 225033

Enc. Submitted documents

c: Mr. Joe Balderas
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(w/o enclosures)