



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 10, 2005

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

OR2005-07247

Dear 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# 229966.

The Texas Department of Criminal Justice (the "department") received a request for "the booking photos or any state photographs of [eleven named former inmates] while in custody from 2001 to 2003." You claim that the requested information is excepted from disclosure under section 552.134 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.134 of the Government Code relates to information about inmates of the department and provides in 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). We note that the 79<sup>th</sup> Legislature amended section 552.029, effective June 18, 2005, to include a "department photograph" of an inmate as a category of information not subject to section 552.134. Although this amendment to section 552.029 was not effective at the time of the department's request for a ruling, this office will apply the laws that are effective at the time of the issuance of a ruling. *See Houston Indep. School*

*Dist. v. Houston Chronicle Publ'g Co.*, 798 S.W.2d 580 (Tex. App.—Houston [1st Dist.] 1990, writ denied); *see also* Open Records Decision No. 600 (1992). Accordingly, we will apply the amended section 552.029 to the submitted information. Section 552.029 provides in part:

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:

- (1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate[.]

Gov't Code § 552.029(1).<sup>1</sup> You state that the submitted information consists of official department photographs of former inmates confined in a facility operated by the department; therefore, you claim that these photographs are excepted from disclosure under section 552.134. We note, however, that section 552.134 is explicitly subject to section 552.029. As noted above, under the recently amended section 552.029(1), the department photograph of an inmate may not be withheld under section 552.134. Accordingly, the submitted photographs may not be withheld under section 552.134. As you claim no other exceptions to disclosure for these photographs, and they are not otherwise confidential by law, they 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, upon receiving this ruling, the governmental body

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<sup>1</sup>As amended by Act of May 25, 2005, 79th Leg., R.S., H.B. 2197, §1 (effective June 18, 2005).

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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 229966

Enc. Submitted documents

c: Ms. Kelly Ann Whalen  
c/o Mr. James M. Frazier III  
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(w/o enclosures)