ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2005

Mr. John C. West
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Texas Department of Criminal Justice
P.O. Box 13084
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Ms. Amy D. Smith
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
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OR2005-09394

Dear Mr. West & Ms. Smith:

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# 234368.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a named employee. The department claims that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.134 of the Government Code. We have considered the exceptions claimed and reviewed the submitted information.[1]

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The submitted information contains an I-9 form (Employment Eligibility Verification), which is governed by section 1324a of Title 8 of the United States Code. This section provides that an I-9 form and "any information contained

[1]We assume that, to the extent any additional responsive information existed when the department received the request for information, the department has released it to the requestor. If not, then the department must do so immediately. *See* Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the form in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the I-9 form is confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

The submitted information also contains W-2 and W-4 forms. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, the W-2 and W-4 tax forms are confidential under section 6103(a), and the department must withhold them under section 552.101 of the Government Code.

You assert the remaining information is excepted under section 552.134 of the Government Code, which relates to inmates of the department. Section 552.134(a) provides the following:

> 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:
>
> > (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
> >
> > . . .
> >
> > (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(1), (8).

On review, we agree that the remaining records constitute information about inmates for purposes of section 552.134. However, the records contain information that concerns injuries to inmates, use of force against inmates, and alleged crimes involving inmates. Thus, the department must release basic information concerning the injuries, 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.[2]

We conclude the following: (1) the I-9 form is confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system; (2) the W-2 and W-4 tax forms are confidential under section 6103(a), and the department must withhold them under section 552.101 of the Government Code; and (3) with the exception of basic information concerning inmate injuries, use of force, and crimes, which must be released, the department must withhold the remaining information under section 552.134.

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

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[2]As we are able to resolve this under section 552.134, we do not address the remaining argument against exception of this information.

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 Office of the Attorney General 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. 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# 234368

Enc. Submitted documents

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