ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2005

Mr. John C. West
OIG General Counsel
Texas Department of Criminal Justice
Office of the Inspector General
P. O. Box 13084
Austin, Texas 78711

OR2005-09832

Dear Mr. West:

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# 238132.

The Texas Department of Criminal Justice (the "department") received a request for copies of audio tapes contained in the requestor's personnel file. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.134(a) of the Government Code relates to inmates of the department and provides in relevant part as follows:

> (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). You state, and the submitted information reflects, that the information at issue concerns an inmate confined in a facility operated by the department.

Thus, we agree that section 552.134 is applicable to the submitted information. We also find that section 552.029 is not applicable. Therefore, the submitted information is excepted from disclosure under section 552.134 of the Government Code and must be withheld. Because we reach this conclusion, we need not address your remaining argument against disclosure.

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 ten 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).

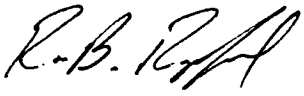
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 238132

Enc. Submitted documents

c: Ms. Geraldline P. Reat
1031 Country Road 406
Lexington, Texas 78947
(w/o enclosures)