ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2005

Ms. Amy D. Smith
Assistant General Counsel
Texas Department of Criminal Justice
P. O. Box 4004
Huntsville, Texas 77342-6994

OR2005-10094

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 235817.

The Texas Department of Criminal Justice (the "department") received a request for all records pertaining to a named inmate. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a supporting affidavit for an arrest warrant. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." Crim. Proc. Code art. 15.26. As a general rule, the exceptions to disclosure found in 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(a) of the Government Code 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 552.029 of the Government Code provides that, notwithstanding section 552.134, eight specified categories of "information about an inmate who is confined in a facility operated by or under a contract with [the department are] subject to required disclosure[.]" These eight categories of information include basic information regarding an alleged crime involving an inmate. *Id.* § 552.029.

The legislature explicitly made section 552.134 subject to section 552.029. On review, we find that the submitted information constitutes information relating to an inmate for purposes of section 552.134. However, these records contain information about an alleged crime involving an inmate. Thus, basic information concerning the crime must be released. 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 remaining submitted information must be withheld under section 552.134.

In summary, the submitted arrested warrant affidavit must be released under article 15.26 of the Code of Criminal Procedure, provided that it was presented to a magistrate in support of the issuance of an arrest warrant. With the exception of basic information required to be released under section 552.029, the department must withhold the remaining submitted information, including the arrest warrant affidavit if not presented to a magistrate, under section 552.134. As our ruling is dispositive, we do not address your remaining arguments.

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).

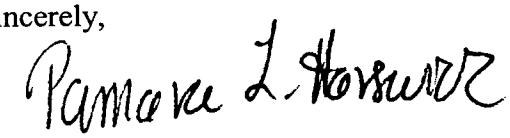
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 235817

Enc. Submitted documents

c: Ms. Wendy Shepard
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(w/o enclosures)