



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2005

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

OR2005-10459

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# 236548.

The Texas Department of Criminal Justice (the "department") received a request for a specified videotape of a mediation involving a named former inmate of the department. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we note that the requestor claims that he previously viewed the submitted videotape while it was in the temporary possession of the requestor's relative. Information that has been previously voluntarily released may not be withheld later unless it is confidential. *See* Gov't Code § 552.007 (voluntary disclosure of certain information is allowed, unless disclosure is expressly prohibited by law or the information is confidential under law); *see also* Open Records Decision No. 400 (1983) (prohibition against selective disclosure does not apply when governmental body releases confidential information to the public). Thus, even if the department previously released the videotape at issue to the public, the department would nevertheless be required to withhold the videotape in this instance if it was

found to be confidential. Therefore, we will address the department's claim under section 552.134 of the Government Code.

We further note that the requestor claims that he has a right of access to the submitted videotape pursuant to section 552.001 of the Government Code. Section 552.001 sets out the policy and construction of the Act. *See* Gov't Code § 552.001. This section does not grant access to information. Accordingly, the requestor does not have a right of access to the submitted videotape pursuant to section 552.001.

The requestor also claims that he has a special right of access to the videotape pursuant to section 552.023 of the Government Code. This section gives a person or a person's authorized representative a "special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023. However, section 552.134 of the Government Code protects the interests of the governmental body; therefore, section 552.023 does not provide the requestor a special right of access to the submitted videotape.

We now turn to the department's arguments under section 552.134 of the Government Code. This section relates to information about inmates of the department and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 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[.]" *See id.* § 552.029. Thus, section 552.134 is explicitly made subject to section 552.029. In this instance, while the individual at issue is no longer confined in one of the department's facilities, we find that section 552.134 is applicable because the submitted videotape is about an inmate. We also find that the submitted videotape is not subject to section 552.029. We therefore conclude that the submitted videotape must be withheld from disclosure 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 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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 236548

Enc. Submitted documents

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(w/o enclosures)