



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 6, 2005

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

OR2005-10935

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 237586.

The Texas Department of Criminal Justice (the "department") received a request for prison records concerning a death row inmate. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested third party may submit comments stating why information should or should not be released).

Initially, we note that the submitted documents contain records that are subject to Chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) provides as follows:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). Mental health records in the submitted documents may only be released in accordance with the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code.

You assert that the remaining submitted information is excepted from disclosure under section 552.134 of the Government Code. Section 552.134 relates to inmates of the department and provides in relevant 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.

(b) Subsection (a) does not apply to:

...

(2) information about an inmate sentenced to death.

Gov’t Code § 552.134(a), (b)(2). The requested information concerns an inmate who is currently confined in a facility operated by the department and who has been sentenced to death. You explain, however, that the submitted information is about the inmate while he was incarcerated with the department for a previous non-capital offense. Consequently, the submitted information is information about a department inmate, but it is not “information about an inmate sentenced to death.” Gov’t Code § 552.134(b). Because the remaining submitted information was not created at a time when the inmate was sentenced to death and is not maintained in the inmate’s current death row file, we find that section 552.134(a) of the Government Code is applicable to this information.

The requestor contends that section 552.023 of the Government Code provides him, as an authorized representative of the inmate at issue, a right of access to the requested information. Section 552.023 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 does not protect only the inmate’s privacy interest.

Therefore, section 552.023 does not provide the requestor with a special right of access to the remaining requested information.

We note, however, that the requestor is entitled to a portion of the requested information. Pursuant to section 552.029(8), basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to required disclosure. Gov't Code § 552.029(8). A portion of the submitted information pertains to an incident involving the use of force against another inmate. While the department must generally withhold the information for which it claims section 552.134, it must release basic information regarding the incident pursuant to section 552.029(8). 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. Accordingly, with the exception of basic information, the department must withhold the remaining submitted information under section 552.134.<sup>1</sup>

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).

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

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,



Lisa V. Cubriel  
Assistant Attorney General  
Open Records Division

LVC/segh

Ref: ID# 237586

Enc: Submitted documents

c: Mr. Joseph Hingston  
Louisiana Capital Assistance Center  
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(w/o enclosures)