



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2005

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

OR2005-11670

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# 238966.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to two named former inmates. The department's Office of the Inspector General (the "OIG") states that it is releasing some of the information held by that office to the requestor with redactions pursuant to the previous determination issued by this office in Open Records No. 2005-01067 (2005).¹ The OIG also indicates that it is withholding social security numbers under section 552.147 of the Government Code.² The OIG informs us that it does not possess information pertaining to one of the named former

¹Open Records Letter No. 2005-01067 (2005) serves as a previous determination for the department that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147). We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

inmates and that, in accordance with its records retention schedule, some responsive information no longer exists.³ We note that we have not received information or arguments from the department other than those submitted by the OIG. To the extent the department maintains responsive information other than that submitted by the OIG, we assume the department has released such information to the requestor. If it has not, it must do so at this time to the extent that such information existed on the date the department received the request for information. *See* Gov't Code §§ 552.301(a), .302. The OIG claims that the information it has submitted for review is excepted from disclosure under section 552.134 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Section 552.134 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 states in relevant part:

Notwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

....

(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.

Gov't Code § 552.029(8). We note that section 552.134 is explicitly made subject to section 552.029. Under section 552.029, 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. You state that the OIG is releasing basic information

³The Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

pursuant to section 552.029(8).⁴ The remaining submitted information constitutes information about inmates confined in a facility operated by the department. We therefore conclude that the OIG must withhold the remainder of the submitted information under section 552.134 of the Government Code.

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

⁴Basic 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.

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,

A handwritten signature in cursive script that reads "L. Joseph James".

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/sdk

Ref: ID# 238966

Enc. Submitted documents

c: Mr. David J. Pels
Shannon, Gracey, Ratliff & Miller, L.L.P.
777 Main Street, Suite 3800
Fort Worth, Texas 76102-5304
(w/o enclosures)