



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

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Ms. Carla M. Cordova  
Assistant General Counsel  
Texas Department of Criminal Justice  
Office of the General Counsel  
P.O. Box 4004  
Huntsville, Texas 77342-4004

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

OR2006-06747

Dear Ms. Cordova and 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# 252249.

The Texas Department of Criminal Justice (the "department") received a request for six categories of information related to a named department officer. The department and its Office of the Inspector General (the "OIG") have submitted separate briefs as well as separate documents that each seeks to withhold from disclosure. The department claims that the information it has submitted is excepted from disclosure under section 552.134 of the Government Code. The OIG states that it has released some of the requested information with redactions pursuant to the previous determination issued by this office in Open Records

Letter No. 2005-01067 (2005).<sup>1</sup> The OIG also states that it is withholding social security numbers under section 552.147 of the Government Code.<sup>2</sup> The OIG claims that the remaining information it has submitted is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code.<sup>3</sup> We have considered the submitted arguments and have reviewed the submitted information.

The OIG states that a portion of the requested information was the subject of a prior ruling from this office. In Open Records Letter No. 2005-09394 (2005), we concluded the following regarding the information at issue: (1) the I-9 form is confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system; (2) the W-2 and W-4 tax forms are confidential under section 6103(a), and must be withheld under section 552.101 of the Government Code; and (3) with the exception of basic information concerning inmate injuries, use of force, and crimes, which must be released, the remaining information must be withheld under section 552.134. Therefore, assuming that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the OIG must continue to rely on our decision in Open Records Letter No. 2005-09394 (2005) with respect to the information requested in this instance that was previously ruled upon in that decision.<sup>4</sup> See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

Both the department and the OIG argue that the information at issue is subject to section 552.134 of the Government Code. This section relates to information about inmates of the department and provides in relevant part as follows:

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<sup>1</sup>Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers and family member information of current or former employees of the Texas Department of Criminal Justice, 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.

<sup>2</sup>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.

<sup>3</sup>Although the OIG initially raised sections 552.107 and 552.111 of the Government Code, it has not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we presume that the OIG has withdrawn these exceptions. See Gov't Code §§ 552.301, 552.302.

<sup>4</sup>The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

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 552.134 is explicitly made subject to section 552.029 of the Government Code, which provides in relevant part as follows:

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 an inmate.

*Id.* § 552.029(8). Upon review, we agree that the submitted information constitutes information about an inmate confined in a facility operated by the department. We note, however, that these documents contain information regarding use of force incidents. Thus, pursuant to section 552.029(8), the department and the OIG must release basic information concerning any use of force incident. 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 department and the OIG must withhold the remaining information pursuant to section 552.134.

In summary, the OIG must continue to rely on our decision in Open Records Letter No. 2005-09394 with respect to the information requested in this instance that was previously ruled upon in that decision. With the exception of basic information, the department and the OIG must withhold the remaining information pursuant to section 552.134.<sup>5</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

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<sup>5</sup>As this ruling is dispositive, we need not address the remaining arguments.

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).

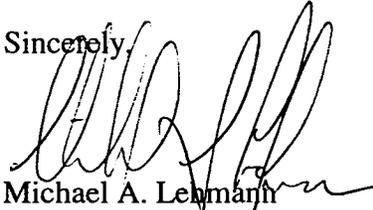
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Michael A. Lehmann  
Assistant Attorney General  
Open Records Division

MAL/sdk

Ref: ID# 252249

Enc. Submitted documents

c: Ms. Yolanda M. Torres  
Attorney at Law  
P.O. Box 515  
Huntsville, Texas 77342-0515  
(w/o enclosures)