



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 18, 2007

Ms. Patricia Fleming  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
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Huntsville, Texas 77342-4004

Mr. John C. West  
General Counsel  
Office of the Inspector General  
Texas Department of Criminal Justice  
P. O. Box 13084  
Austin, Texas 78711-2548

OR2007-00533

Dear Ms. Fleming 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# 269174.

The Texas Department of Criminal Justice (the "department") received a request for all records "pertaining to investigations, or allegations of improper conduct, and disciplinary actions" relating to a named department employee. The department and the Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate documents that each seeks to withhold from disclosure. The OIG indicates that it is releasing some of the requested information to the requestor with redactions pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).<sup>1</sup> The

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<sup>1</sup>Open Records Letter No. 2005-01067 (2005) 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 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.

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. The department indicates that it will make some information available to the requestor. However, the department claims that the information it has submitted is excepted from disclosure under sections 552.108 and 552.134 of the Government Code.<sup>3</sup> We have considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>4</sup>

Both the department and the OIG argue that the submitted information 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:

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 inmates confined in a facility operated by the department. We note,

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<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. Gov't Code § 552.147(b).

<sup>3</sup>We note that in its brief dated November 16, 2006, the department withdrew its assertions of sections 552.101, 552.107, and 552.111 of the Government Code for the information it submitted.

<sup>4</sup>We assume that the "representative sample" of records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 409 (1988), 496 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

however, that the OIG indicates that basic information related to use of force incidents and alleged crimes involving an inmate has been released 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. With the exception of basic information released by the OIG, 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 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

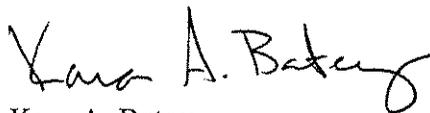
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<sup>5</sup>As our ruling is dispositive, we need not address your other arguments.

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 black ink that reads "Kara A. Batey". The signature is written in a cursive style with a large, looped "y" at the end.

Kara A. Batey  
Assistant Attorney General  
Open Records Division

KAB/krl

Ref: ID# 269174

Enc. Submitted documents

c: Cherokee Electric  
c/o Mr. Glen D. Vess  
P. O. Box 257  
Rusk, Texas 75785  
(w/o enclosures)