



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2007

Ms. Patricia Fleming
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
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

OR2007-08206

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# 283245.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a use of force involving a named inmate. The Office of the Inspector General states that it will release some of the requested information, except for information that the department is authorized to withhold under sections 552.117 and 552.147 of the Government Code.¹ Both of you have submitted information that the department seeks to

¹See Open Records Letter No. 2005-01067 (2005) (authorizing department to withhold information relating to its current or former employees under Gov't Code § 552.117(a)(3) without necessity of requesting attorney general decision under Act); Gov't Code § 552.147(b) (authorizing governmental body to redact living person's social security number from public release under Gov't Code § 552.147 without necessity of

withhold under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.134 of the Government Code is applicable to information relating to inmates of the department. This exception states that

[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] 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.

Gov't Code § 552.134(a). Section 552.029 of the Government Code provides in part that

[n]otwithstanding . . . 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.

Id. § 552.029(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

We conclude that section 552.134(a) is generally applicable to the submitted information. We note, however, that the information is related to separate incidents involving uses of force and alleged crimes involving an inmate. Accordingly, the department must release basic information about those incidents under section 552.029(8). The basic information that must be released includes the times and places of the incidents, the names of inmates and department employees who were involved, brief narratives of the incidents, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incidents. With the exception of the basic information that must be released under section 552.029 of the

Government Code, the department must withhold the submitted information under section 552.134 of the Government Code.²

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).

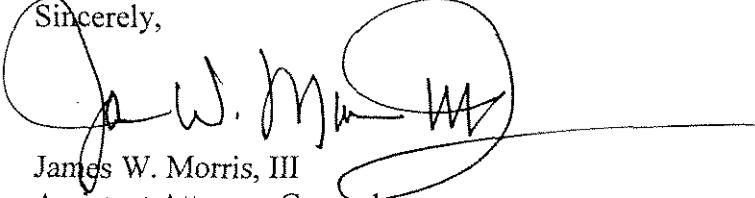
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

²As we are able to make this determination, we need not address the department's other exceptions to disclosure, except to note that basic information under section 552.029(8) corresponds to the basic information that must be released under section 552.108(c) of the Government Code. *See* Gov't Code § 552.108(c); *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App. – Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *Open Records Decision No. 127* at 3-4 (1976).

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, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, circular flourish at the beginning and a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 283245

Enc: Submitted documents

c: Ms. Nancy Amaya
Habern, O'Neil & Buckley L.L.P.
P.O. Box 8930
Huntsville, Texas 77340
(w/o enclosures)