



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2008

Ms. Patricia Fleming
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2008-06594

Dear Ms. Fleming:

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# 310056.

The Texas Department of Criminal Justice (the "department") received a request for all records related to a fire at a department facility. You state that you will provide the requestor with some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.134 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the department did not comply with section 552.301 of the Government Code with respect to a portion of the information at issue. Section 552.301(e) requires the governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific

¹We note that although you also raise section 552.101 in your brief to this office, you have not explained the applicability of this exception. Thus, we have no basis to conclude that section 552.101 applies to the information. *See* Open Records Decision No. 542 (1990) (governmental body has burden to prove exception applies to requested information).

information that the governmental body seeks to withhold or representative samples if the information is voluminous. Gov't Code § 552.301(e)(1)(A)-(D). The department received the present request on February 26, 2008. Although you submitted some of the responsive information by the fifteen-business-day deadline, a portion of the information at issue was not submitted until March 19, 2008. Consequently, we find the department failed to comply with the procedural requirements of section 552.301 with respect to this additional information submitted on March 19, 2008.

If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex.App-Austin 1990, no writ). A compelling reason exists when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You raise section 552.134. Because this section can provide a compelling reason to withhold information, we will address your arguments against the disclosure of both the timely and untimely submitted information.

Section 552.134 of the Government Code relates to information about inmates of the department. Section 552.134 provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice 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). Upon review, we agree that a portion of the submitted information relates to inmates confined in a facility operated by the department. We find that the exceptions in section 552.029 are not applicable to this information. Therefore, you must withhold the information we have marked under section 552.134(a) of the Government Code. However, we find that the remaining information concerns department employees and does not constitute information about an inmate confined in a facility operated by the department for the purposes of section 552.134. Accordingly, the remaining information may not be withheld under section 552.134.

We note that the remaining information includes the personal information of current or former employees of the department. In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold the personal information of a current or former employee of the department under section 552.117(a)(3) of the Government Code without the necessity of again requesting an attorney general decision with regard to the applicability of this exception. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of

previous determination under section 552.301(a)). Therefore, the department must withhold the personal information we have marked under section 552.117 in accordance with Open Records Letter No. 2005-01067.

We next note that a portion of the remaining information is copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the department must withhold the information we have marked under section 552.134 of the Government Code. The department must withhold the information we have marked under section 552.117 of the Government Code in accordance with Open Records Letter No. 2005-01067. The remaining information must be released, but the information we have marked must be released in accordance with copyright law.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,

A handwritten signature in black ink, appearing to read 'Chris Schulz', with a long, sweeping horizontal line extending to the right.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/jb

Ref: ID# 310056

Enc. Submitted documents

c: Mr. Mike Ludeman
P.O. Box 2024
Denton, Texas 76202
(w/o enclosures)