



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2008

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

OR2008-10450

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# 317603.

The Texas Department of Criminal Justice (the "department") received a request for the complete disciplinary file of the requestor, a former department employee. You state that you are releasing some responsive information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.134 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us that the submitted reprimand form was previously ruled upon in Open Records Letter No. 2005-08144 (2005). In that instance the department received a request for the requestor's complete disciplinary file. Our office held that the reprimand form was subject to section 552.134 of the Government Code, but that basic information must be released pursuant to section 552.029(8) of the Government Code. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on that ruling as a previous determination and withhold or release the submitted reprimand form in accordance with Open Records Letter No. 2005-08144. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note that our office requested clarification from the department in order to determine whether the remaining submitted information had previously been ruled upon in Open Records Letter No. 2005-08144. *See* Gov't Code § 552.303(c) (providing that attorney general may give written notice to governmental body that additional information is necessary to render a decision). In correspondence to our office, you responded that, "only

one of the two responsive documents submitted to you on May 28, 2008 by our office concerning the instant request was submitted to your office as responsive to the request in 2005. The handwritten note dated 3/25/05 . . . was not submitted to your office as responsive to the request in 2005 and therefore has not been ruled upon.” Based on the department’s statement that it only submitted one of the documents at issue in the instant request for our review in response to the requestor’s June 20, 2005 request, we find that the department failed to comply with the procedural requirements of section 552.301 of the Government Code for the handwritten note that was not submitted to our office for review despite being responsive to the requestor’s June 20, 2005 request. *See id.* § 552.301(e) (governmental body must submit certain required items within fifteen business days of receipt of written request).

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *Id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.134 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider the department’s claim under this exception for the handwritten note.

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). The submitted handwritten note relates to an inmate who was confined in a facility operated by the department. Thus, we agree that this information is subject to section 552.134. We find that the exceptions in section 552.029 are not applicable in this instance. Therefore, the department must withhold the submitted handwritten note under section 552.134(a) 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 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). If the governmental body does not file suit over 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,



Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/jb

Ref: ID# 317603

Enc. Submitted documents

c: Ms. Marisa Jaramillo
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Kenedy, Texas 78119
(w/o enclosures)