



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2008

Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
P. O. Box 13084
Austin, Texas 75711

OR2008-13180

Dear 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# 325372.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a deceased inmate. The department's Office of the Inspector General (the "OIG") has submitted a brief and documents that it seeks to withhold from disclosure.¹ You state that some of the requested information is the subject of a previous open records letter ruling and claim that the remaining responsive information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the submitted arguments and have reviewed the submitted information.

You inform us that some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-00227

¹The OIG states that it is withholding the addresses, telephone numbers, social security numbers, and family member information of department employees that are excepted under section 552.117(a)(3) and the previous determination set forth in Open Records Letter No. 2005-01067 (2005). The department also states that it is withholding other social security numbers pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147(b) (governmental body may redact social security numbers of living persons from public release without necessity of requesting decision from this office under the Act).

(2007). As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the OIG must continue to rely on that ruling as a previous determination and withhold or release this information, which you have marked, in accordance with Open Records Letter No. 2007-00227. *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).

You assert the remaining information is excepted under section 552.134 of the Government Code. Section 552.134(a) relates to inmates of the department and provides in relevant part the following:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice 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 552.134 is explicitly made subject to section 552.029, which provides in relevant part the following:

Notwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice 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). Upon review, we agree that the records at issue constitute information about an inmate for purposes of section 552.134. However, as you acknowledge, some of these records concern the death of an inmate in custody. Thus, the OIG must release basic information concerning this death, which you state has been released, pursuant to section 552.029(8). *Id.* 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 OIG must withhold the remaining submitted information pursuant to section 552.134 of the Government Code.²

In summary, the OIG must continue to rely on Open Records Letter No. 2007-00227 as a previous determination for the marked information subject to that letter ruling. The OIG must withhold the remaining information pursuant to section 552.134 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).

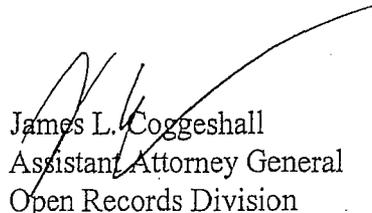
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

²As our ruling is dispositive, we do not address the OIG's remaining arguments against disclosure.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ma

Ref: ID# 325372

Enc. Submitted documents

c: Ms. Eustolia M. Cortinas
1418 Curtin
Houston, Texas 77108
(w/o enclosures)