



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2009

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

OR2009-00126

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# 331628 (OIG ORR File #OR-2008-0311).

The Texas Department of Criminal Justice (the "department") received a request for "detailed information," including statements and reports made by each person involved, for a specified incident involving the requestor. You state the department has released basic information to the requestor.¹ You claim the submitted information is excepted from disclosure under sections 552.108 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us 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. 2008-12877 (2008). In that ruling, our office determined, with the exception of basic information, the department may withhold the submitted case file pursuant to section 552.108(a)(1) of the Government Code. However, you inform us the circumstances on which Open Records Letter No. 2008-12877 is based have changed. Therefore, the

¹You state the department has redacted social security numbers and other information pursuant to section 552.147 of the Government Code and the previous determination it received in Open Records Letter No. 2005-01067 (2005).

department may not rely on Open Records Letter No. 2008-12877 as a previous determination. *Cf.* Open Records Decision No. 673 at 7-8 (2001) (governmental body may rely on prior ruling as a previous determination when (1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); (2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; (3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and (4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). Thus, we will address your arguments against disclosure for the information at issue, as well as the submitted information not at issue, in the prior ruling.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a case that did not result in prosecution of a suspect. You argue the information is part of a file regarding criminal allegations that did not result in a conviction or deferred adjudication. However, you also state the department "still considers the file [sic] investigation of contraband in a correctional facility" and that "it is highly likely that under certain circumstances [the department] would still seek criminal charges against the accused[.]" Based on your representations, we find you have not sufficiently demonstrated the submitted information relates to a concluded investigation that did not result in conviction or deferred adjudication. We therefore conclude the department may not withhold the submitted information under section 552.108(a)(2) of the Government Code.

Section 552.134 of the Government Code relates to inmates of the department and provides in relevant part:

- (a) 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.

Id. § 552.134(a). Section 552.134 is explicitly made subject to section 552.029 of the Government Code, which provides in pertinent part:

[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). Upon review, we find some of the submitted information, which we have marked, relates to an inmate confined in a facility operated by the department. We note, however, most of this information relates to a crime involving the inmate. Therefore, basic information concerning this incident must be released. *See 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. Accordingly, with the exception of the basic information, which you state has been released, the department must withhold the information we have marked under section 552.134 of the Government Code. As you raise no further exceptions to disclosure, the remaining submitted information must be released to the requestor.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 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).

²We note the submitted information contains a social security number. 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. The requestor has a right, however, to his/her own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

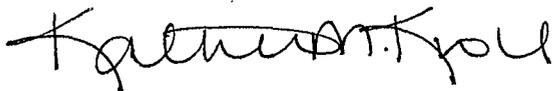
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 331628

Enc. Submitted documents

c: Requestor
(w/o enclosures)