



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 15, 2009

Mr. James Mu
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-04974

Dear Mr. Mu:

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# 340020.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a use of force incident involving the requestor's client. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.134 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Initially, we note you seek to withhold medical records pursuant to section 552.101 of the Government Code in conjunction with the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. However, the requestor informs us that she did not request this information. Accordingly, the medical records that we have marked are not responsive to the request. This ruling does not address the public availability of any information that

¹We note that the department has withdrawn its assertions under sections 552.102, 552.103, 552.104, 552.108, 552.110, 552.111, 552.116, 552.122, 552.130, 552.1325, 552.136, and 552.137 of the Government Code.

is not responsive to the request, and the department is not required to release this information in response to this request.

Next, we note a portion of the submitted information is subject to section 552.022(a)(1) of the Government Code, which provides:

the following categories of information are public information and not excepted from required disclosure under [the Act] unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information contains a completed use of force report. A completed report must be released under section 552.022(a)(1), unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. Section 552.107 of the Government Code is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.107 is not "other law" that makes information confidential for the purposes of section 552.022. The Texas Supreme Court has held, however, that the Texas Rules of Evidence are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Because you also assert Texas Rule of Evidence 503, we will consider your argument. Additionally, because information subject to section 552.022(a)(1) may be withheld under section 552.134 of the Government Code, we will consider your argument under section 552.134 against disclosure of the use of force report as well as the remaining information.

Section 552.134 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 552.029 of the Government Code provides in relevant part as follows:

[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:

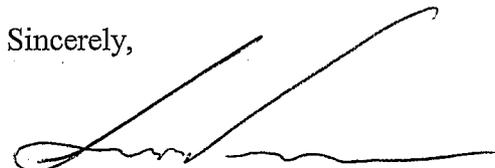
(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029. Upon review, we agree that the submitted information pertains to an inmate confined in a facility operated by the department. However, because this information relates to a use of force incident, the department must release basic information regarding this incident. *See id.* The basic information that must be released includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, 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. The requestor states that she is the attorney of the inmate at issue. Section 552.023 of the Government Code gives a person or that person's authorized representative a "special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See id.* § 552.023. We note, however, that section 552.134 does not protect only the inmate's privacy interests. Therefore, section 552.023 does not provide the requestor a special right of access to the submitted information. Accordingly, with the exception of basic information, the department must withhold the submitted information under section 552.134 of the Government Code.²

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/sdk

²As our ruling is dispositive, we need not address your argument under Texas Rule of Evidence 503.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)