



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2009

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

OR2009-05309

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# 340490 (TDCJ #1396007).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified department inmate. 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, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific

information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D).

You state that the request at issue was received by the department on March 8, 2009. However, the submitted information reflects that the requestor made a previous request on December 11, 2008 for all information pertaining to the named inmate at issue, and that the department released information responsive to that request. You do not inform us, nor do our records indicate, that the department asked this office for a decision in connection with the previous request for information. *See id.* § 552.301(b). After releasing responsive information to the requestor, the department received an e-mail from the requestor on March 8, 2009 stating the requestor had not received all of the requested information, specifically the parole requirements of the named inmate and a specified disciplinary action. Although you treated the March 8 e-mail as a second request, we find that the documents at issue were responsive to the December 11, 2008 request for all information pertaining to the named inmate. Because you failed to request a decision from this office or submit the information required by section 552.301(e) within the statutory deadlines for the documents you now seek to withhold, we find that the department failed to comply with the procedural requirements of section 552.301.

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code* § 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). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that 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). Because the department's claim under section 552.134 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will consider the applicability of this exception to the submitted information.

Next, we note that you have not submitted information pertaining to the requested parole requirements. To the extent that this information existed on the date the department received the December 11, 2008 request, we assume you have released it. If you have not released this information, you must do so at this time. *See Gov't Code* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

We now address your claim for the submitted information under section 552.134 of the Government Code, which 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.

The submitted information consists of information about an inmate confined in a facility operated by the department. We find that the exceptions in section 552.029 are not applicable. Therefore, you must withhold the submitted information under section 552.134(a) of the Government Code.

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/jb

Ref: ID# 340490

Enc. Submitted documents

c: Requestor
(w/o enclosures)