



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 8, 2009

Mr. John C. West  
General Counsel  
Office of the Inspector General  
Texas Department of Criminal Justice  
4616 Howard Lane, Suite 250  
Austin, Texas 78728

OR2009-05806A

Dear Mr. West:

This office issued Open Records Letter No. 2009-05806 (2009) on May 1, 2009 pertaining to the Texas Department of Criminal Justice (the "department"). We have examined this ruling and determined that we made an error in calculating the department's fifteen business-day deadline under section 552.301(e) of the Government Code, which resulted in an erroneous determination that the department failed to comply with the procedural requirements mandated by section 552.301. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on May 1, 2009. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")).

The department received a request for information relating to two named inmates. You state that information pertaining to one of the named inmates does not exist.<sup>1</sup> You inform us that the department will release some of the requested information, subject to redactions pursuant

---

<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

to the previous determination issued in Open Records Letter No. 2005-01067 (2005)<sup>2</sup> and section 552.147 of the Government Code.<sup>3</sup> You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.134, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.134 of the Government Code is applicable to information relating to inmates of the department. Section 552.134(a) states that

[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] 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 552.029 of the Government Code provides in part that

[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:

(1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

(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(1), (8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

---

<sup>2</sup>Open Records Letter No. 2005-01067 authorizes the department to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of its current or former employees under section 552.117(a)(3) of the Government Code, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, without the necessity of requesting a decision under the Act. *See* Open Records Decision No. 673 (2001) (previous determinations).

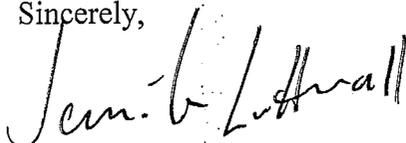
<sup>3</sup>Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

We find that section 552.134(a) is generally applicable to the submitted information. However, we note that some of the submitted information pertains to a use of force incident. You inform us, and have provided documentation reflecting, that the department will release basic information regarding the use of force incident.<sup>4</sup> We therefore conclude that the department must withhold the remaining submitted information under section 552.134 of the Government Code. As our ruling is dispositive, we need not address your remaining claims against disclosure.

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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 341637

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>4</sup>Basic information under section 552.029(8) 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 incident.