



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 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

OR2009-09713

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# 347470.

The Texas Department of Criminal Justice's Office of the Inspector General (the "OIG") received a request for five categories of information relating to an incident involving a specified inmate. We understand you to claim that the OIG need not comply with the request pursuant to section 552.028 of the Government Code. In the alternative, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.028 of the Government Code provides in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). You assert that, because the requestor is not licensed to practice law in the State of Texas, she cannot act as the attorney for the inmate at issue, but instead should be considered the inmate's agent for purposes of section 552.028(a)(2). You assert that the OIG is not required to comply with a request from an inmate's agent. However, section 552.028 contains no requirement that an attorney be licensed in the State of Texas. In this instance, the requestor states she is an attorney licensed to practice in the State of Illinois and made this request as the attorney of the inmate at issue. Thus, we conclude the requestor in this instance made this request in her capacity as the attorney of the inmate at issue for the purposes of section 552.028(a)(2) of the Government Code. Accordingly, the OIG must accept and comply with the instant request.

We note that you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of the records indicate, that you have been authorized to withhold any of the redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the OIG should refrain from redacting any information it submits to this office in seeking an open records ruling. Redaction of such information may result in a determination that the information must be released. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. —Austin 1990, no writ).

We next address the OIG'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 must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body must 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. Gov't Code § 552.301(e). The OIG received the request for information on February 27, 2009, but did not request a decision from this office or submit any information as required by section 552.301(e) until April 23, 2009. *See* Gov't Code § 552.301(b), (e). Thus, the OIG failed to comply with the requirements mandated by section 552.301.

A governmental body's failure to comply with the procedural requirements of the Act 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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can 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). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). However, sections 552.101 and 552.134 can provide compelling reasons to overcome this presumption; therefore, we will consider your arguments under these exceptions.

Section 552.134 relates to inmates of the Texas Department of Criminal Justice (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.

Gov't Code § 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 OIG 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 asserts that as the attorney of the inmate at issue, she has a special right of access to the requested information. 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 OIG must withhold the submitted information under section 552.134 of the Government Code.<sup>1</sup>

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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 347470

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)