



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 12, 2011

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

OR2011-06619

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# 417257.

The Texas Department of Criminal Justice (the "department") received a request for five categories of information pertaining to two named employees and the death of an inmate. You state some information has been or will be released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-03269 (2011). In that ruling, we concluded, except for basic information, the department must withhold the submitted information under section 552.134 of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2011-03269 was based have changed. Accordingly, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude the department must continue to rely on Open Records Letter No. 2011-03269 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was

based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will address your arguments against its release.

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

Except 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 552.134 is explicitly made subject to section 552.029, which provides, in relevant part:

[n]otwithstanding [s]ection . . . 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). In this instance, some of the submitted information pertains to the conduct of department employees. As such, this information is not "about an inmate" for purposes of section 552.134 and may not be withheld on that basis. However, upon review, we find the information we have marked pertains to individuals confined as inmates in a facility operated by the department; therefore, we conclude section 552.134(a) is generally applicable to this information. We note, however, some of this information pertains to an alleged crime involving inmates and the death of an inmate in custody. Therefore, the department must release basic information about the alleged crime and inmate's death pursuant to section 552.029(8). 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. Therefore, with the exception of basic

information, the department must withhold the information we have marked pursuant to section 552.134(a) of the Government Code.¹

In summary, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude the department must continue to rely on Open Records Letter No. 2011-03269 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. To the extent the submitted information is not encompassed by the previous ruling, and with the exception of basic information, the department must withhold the information we have marked pursuant to section 552.134(a) of the Government Code. The remaining information must be released.

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, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 417257

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.