



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2011

Ms. Charlotte A. Towe
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2011-13150

Dear Ms. Towe:

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# 429698.

The Texas Department of Criminal Justice (the "department") received a request for six categories of information pertaining to disciplinary case number 20110291184 and a named inmate. You state the department will provide some of the requested information to the requestor. You claim the submitted disciplinary case information is excepted from disclosure under sections 552.103 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 is subject to section 552.022 of the Government Code, which provides, in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter 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 disciplinary case records contain completed reports, which 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. Although you claim the reports are excepted under section 552.103 of the Government Code, this section is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Consequently, the department may not withhold the submitted completed reports, which we have marked, under section 552.103 of the Government Code. You also assert the reports are excepted under section 552.134 of the Government Code. Because information subject to sections 552.022(a)(1) may be withheld under section 552.134, we will consider the applicability of section 552.134 to the completed reports, along with your claims under sections 552.103 and 552.134 for the remaining submitted information.

Section 552.134 of the Government Code relates to inmates and former 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 [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). Upon review, we agree all of the submitted information consists of records pertaining to an individual confined as an inmate in a facility operated by the department and is, therefore, subject to section 552.134. We find the exceptions in section 552.029 are not applicable in this instance. Therefore, the department must withhold the submitted information under section 552.134(a) of the Government Code.¹

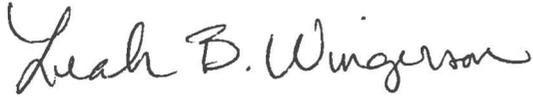
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

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

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 429698

Enc. Submitted documents

c: Requestor
(w/o enclosures)